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CHAPTER 1

MARRIAGE

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Part 1
General Provisions

40-1-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

40-1-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-1-103. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this chapter is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

History: En. 48-304 by Sec. 4, Ch. 536, L. 1975; R.C.M. 1947, 48-304.

Cross-References

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Contracts in restraint of marriage generally void, 28-2-706.

What contracts must be in writing — marriage, 28-2-903.

40-1-104. Application. All marriages contracted within this state prior to January 1, 1976, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

History: En. 48-313 by Sec. 13, Ch. 536, L. 1975; R.C.M. 1947, 48-313.

40-1-105. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Application of the Montana Rules of Civil Procedure to termination of marriage, child custody, and support, 40-4-103.

Procedure — commencement — pleadings — abolition of existing defenses in termination of marriage, 40-4-105.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7, part 1.

40-1-106. Parts of code not applicable. The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them have no application to the contract of marriage.

History: En. Sec. 58, Civ. C. 1895; re-en. Sec. 3615, Rev. C. 1907; re-en. Sec. 5708, R.C.M. 1921; Field Civ. C. Sec. 43; re-en. Sec. 5708, R.C.M. 1935; R.C.M. 1947, 48-114.

Cross-References

Cause of action for breach of promise abolished, 27-1-602.

Parties to contracts, Title 28, ch. 2, part 2.

Contracts, Title 28, ch. 2 and 3.

Minors — power to contract, Title 41, ch. 1, part 3.

40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of public health and human services shall prescribe the form for an application for a marriage license, which must include the following information:

(a) name, sex, address, and date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, the party's name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of public health and human services shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

History: En. 48-305 by Sec. 5, Ch. 536, L. 1975; R.C.M. 1947, 48-305; amd. Sec. 72, Ch. 418, L. 1995; amd. Sec. 112, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) and (2) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1) and (2) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Solemnization and registration — consent to marriage, 40-1-301.

Dissolution of marriage, Title 40, ch. 4, part 1.

Relinquishment of parental rights, 40-6-135.

Child legitimized by marriage of parents, 40-6-203.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Duty to furnish information, 50-15-108.

Marriage certificates, 50-15-301.

Part 2
License Provisions

40-1-201. License application. (1) No Montana resident may be joined in marriage within this state until a license has been obtained for that purpose from a clerk of the district court.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, his part of the application may be completed and sworn to or affirmed before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963; amd. Sec. 8, Ch. 33, L. 1977; R.C.M. 1947, 48-146; amd. Sec. 1, Ch. 42, L. 1983.

Cross-References

Duties of Clerk of District Court, Title 3, ch. 5, part 5.

Discrimination in issuance of licenses prohibited, 49-3-204.

40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of $30, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

History: En. 48-306 by Sec. 6, Ch. 536, L. 1975; R.C.M. 1947, 48-306; amd. Sec. 6, Ch. 677, L. 1979; amd. Sec. 2, Ch. 493, L. 1981.

Cross-References

Fees of Clerk of District Court, 25-1-201.

Prohibited marriages, 40-1-401.

Minors and adults defined, 41-1-101.

Marriage certificates, 50-15-301.

Funding for battered spouses grant programs, 52-6-105.

40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant for a license shall provide a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of public health and human services, shall file with the license issuer a medical certificate from a physician who is licensed to practice medicine and surgery in any state or United States territory or from any other person authorized by rule of the department to issue a medical certificate. The certificate must state that the applicant has been given a standard serological test, that the report of the results of the serological test has been shown to the applicant tested, and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or other person authorized to issue a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977; R.C.M. 1947, 48-134; amd. Sec. 1, Ch. 33, L. 1979; amd. Sec. 1, Ch. 228, L. 1981; amd. Sec. 1, Ch. 154, L. 1983; amd. Sec. 1, Ch. 186, L. 1989; amd. Sec. 73, Ch. 418, L. 1995; amd. Sec. 113, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in (1), in second sentence, substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1), in second sentence, substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Declaration of invalidity, 40-1-402.

Minors and adults defined, 41-1-101.

Serological test for syphilis, 50-18-104.

Certificate of freedom from sexually transmitted disease not to be issued, 50-18-111.

40-1-204. Contents and form of medical certificate. (1) The medical certificate must contain a statement from a physician or other person authorized by rule of the department of public health and human services to make the reports, setting forth:

(a) the name of the test;

(b) the name and address of the physician or other person authorized by rule of the department to sign the certificate;

(c) the name and address of the laboratory performing the test; and

(d) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, the results must be expunged from the records of the department of public health and human services.

(3) (a) The certificate and statement must be on a form to be provided and distributed, upon request, by the department of public health and human services.

(b) This form is referred to in 40-1-205 through 40-1-209 as the "certificate form".

History: En. Sec. 2, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 5, Ch. 33, L. 1977; R.C.M. 1947, 48-135; amd. Sec. 2, Ch. 154, L. 1983; amd. Sec. 2, Ch. 186, L. 1989; amd. Sec. 74, Ch. 418, L. 1995; amd. Sec. 114, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 in (1), (2), and (3)(a) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1), (2), and (3)(a) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Certificates, 50-15-109.

Certificate of freedom from sexually transmitted disease not to be issued, 50-18-111.

40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have received a standard serological test outside of Montana. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard serological tests.

History: En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973; R.C.M. 1947, 48-136; amd. Sec. 2, Ch. 228, L. 1981; amd. Sec. 1, Ch. 25, L. 1985; amd. Sec. 3, Ch. 186, L. 1989.

Cross-References

Serological test for syphilis, 50-18-104.

40-1-206. Premarital test — approved laboratories — rules. (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test is a test for rubella immunity that is approved by the department of public health and human services.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department of environmental quality;

(b) a laboratory approved by the department of public health and human services;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of environmental quality.

(4) The department of public health and human services shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test.

History: En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973; amd. Sec. 6, Ch. 33, L. 1977; R.C.M. 1947, 48-137; amd. Sec. 3, Ch. 154, L. 1983; amd. Sec. 75, Ch. 418, L. 1995; amd. Secs. 115, 568, Ch. 546, L. 1995.

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1995 Amendments: Chapter 418 in (1), (2)(a), (3), and (4) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1) and (4) substituted "department of public health and human services" for "department of health and environmental sciences"; in (2)(a), after "department", inserted "of environmental sciences" (pursuant to sec. 568, Ch. 546, L. 1995, a coordination section, the Code Commissioner substituted "department of environmental quality" for "department of environmental sciences"); in (2)(b), after "department", inserted "of public health and human services"; in (3), pursuant to sec. 568, Ch. 546, L. 1995, a coordination section, the Code Commissioner substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Serological test for syphilis, 50-18-104.

40-1-207. Examination by health officer. Any applicant for a marriage license may, if he so chooses, be examined free of charge by the county physician or county health officer.

History: En. Sec. 5, Ch. 208, L. 1947; R.C.M. 1947, 48-138.

Cross-References

Serological test for syphilis, 50-18-104.

Powers and duties of health officers, 50-18-107.

40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of public health and human services to issue a medical certificate, or a person in charge of or authorized to make reports or statements for a laboratory who misrepresents the person's identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, a licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges the information or opens to inspection the certificates, statements, reports, or applications, without authority, to any person not entitled to the material by law is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

History: En. Sec. 6, Ch. 208, L. 1947; amd. Sec. 7, Ch. 33, L. 1977; R.C.M. 1947, 48-139; amd. Sec. 4, Ch. 154, L. 1983; amd. Sec. 4, Ch. 186, L. 1989; amd. Sec. 76, Ch. 418, L. 1995; amd. Sec. 116, Ch. 546, L. 1995.

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1995 Amendments — Composite Section: Chapter 418 in (1), in first sentence, substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 near beginning of (1) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Misdemeanors — classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Permissible release of information concerning infected persons, 50-18-109.

Violation a misdemeanor, 50-18-113.

40-1-209. Expenses. The department of public health and human services shall provide the necessary printing and pay the necessary expenses related to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for the expenses must be submitted for approval and audit to the department of public health and human services and must be paid in accordance with law.

History: En. Sec. 7, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 48-140; amd. Sec. 77, Ch. 418, L. 1995; amd. Sec. 117, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 near beginning and near end substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in two places substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Rules of Department binding, 50-18-105.

40-1-210. No license to be issued when applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963; R.C.M. 1947, 48-147.

Cross-References

Declaration of invalidity, 40-1-402.

40-1-211. Repealed. Sec. 1, Ch. 124, L. 1979.

History: En. Sec. 7, Ch. 232, L. 1963; R.C.M. 1947, 48-148.

40-1-212. Effective period of license. A license to marry is effective upon issuance and expires after 180 days.

History: En. 48-307 by Sec. 7, Ch. 536, L. 1975; R.C.M. 1947, 48-307; amd. Sec. 1, Ch. 7, L. 1987.

40-1-213. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged 16 or 17 years who has no parent capable of consenting to his marriage or has the consent of both parents or of the parent having the actual care, custody, and control to his marriage, if capable of giving consent, or of his guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

History: En. 48-308 by Sec. 8, Ch. 536, L. 1975; R.C.M. 1947, 48-308; amd. Sec. 1, Ch. 183, L. 1979.

Cross-References

Minors and adults defined, 41-1-101.

Release of information by physician concerning pregnant minor, 41-1-402, 41-1-403.

Part 3
Solemnization

40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

History: En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; R.C.M. 1947, 48-309(1), (2), (4); amd. Sec. 1, Ch. 247, L. 1979; amd. Sec. 3, Ch. 348, L. 1985.

Cross-References

Powers of judicial officers, Title 3, ch. 1, part 4.

Form of application, license, marriage certificate, and consent, 40-1-107.

Powers of attorney, Title 72, ch. 5, part 5.

40-1-302 through 40-1-310 reserved.

40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is $30 and shall be paid to the clerk at time of filing.

History: **En. Sec. 85, Civ. C. 1895; re-en. Sec. 3631, Rev. C. 1907; re-en. Sec. 5724, R.C.M. 1921; Cal. Civ. C. Sec. 75; re-en. Sec. 5724, R.C.M. 1935; amd. Sec. 1, Ch. 275, L. 1959; amd. Sec. 44, Ch. 536, L. 1975; R.C.M. 1947, 48-130; amd. Sec. 2, Ch. 33, L. 1979; amd. Sec. 2, Ch. 12, L. 1983.**

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Fee for filing declaration of marriage, 25-1-201.

Who may contract, 28-2-201.

Proof of age and medical certificate required, 40-1-203.

Validity of common-law marriage, 40-1-403.

Funding of battered spouses grant program, 52-6-105.

40-1-312. Persons who may draft declaration of marriage. It shall be unlawful for any person other than the parties to such written declaration to draw any such declaration of marriage unless he shall have been duly licensed to practice law in the state of Montana.

History: **En. Sec. 2, Ch. 275, L. 1959; R.C.M. 1947, 48-130.1.**

Cross-References

Attorney certification, 37-61-206.

40-1-313. Penalty. Any person violating the provisions of 40-1-311 or 40-1-312, upon conviction, shall be subject to a fine of not less than $300 or 6 months in a county jail, or both.

History: **En. Sec. 3, Ch. 275, L. 1959; R.C.M. 1947, 48-130.2.**

Cross-References

Misdemeanor defined, 45-2-101.

40-1-314 through 40-1-320 reserved.

40-1-321. Registration of marriage. (1) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(2) Every person solemnizing a marriage who shall neglect to make and deliver to the clerk of the district court a certificate thereof within 30 days after having solemnized such marriage shall forfeit for such neglect a sum not less than $10 or more than $50; and any clerk of the district court who shall neglect to record such certificate so delivered within 1 month after its delivery shall forfeit the like penalty.

History: **(1)En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; Sec. 48-309, R.C.M. 1947; (2)En. Sec. 7, p. 409, Bannack Stat.; re-en. Sec. 7, p. 520, Cod. Stat. 1871; re-en. Sec. 860, 5th Div. Rev. Stat. 1879; re-en. Sec. 1421, 5th Div. Comp. Stat. 1887; amd. Sec. 79, Civ. C. 1895; re-en. Sec. 3625, Rev. C. 1907; re-en. Sec. 5718, R.C.M. 1921; re-en. Sec. 5718, R.C.M. 1935; Sec. 48-124, R.C.M. 1947; R.C.M. 1947, 48-124, 48-309(3).**

Cross-References

Clerk of Court — general duties, Title 3, ch. 5, part 5.

Manner of keeping records and storing documents, 7-4-2221.

Documents subject to recording, 7-4-2613.

Index to records of marriage certificates, 7-4-2619.

40-1-322. Certificate and copy presumptive evidence. The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage.

History: **En. Sec. 10, p. 410, Bannack Stat.; re-en. Sec. 10, p. 521, Cod. Stat. 1871; re-en. Sec. 863, 5th Div. Rev. Stat. 1879; re-en. Sec. 1424, 5th Div. Comp. Stat. 1887; amd. Sec. 81, Civ. C. 1895; re-en. Sec. 3627, Rev. C. 1907; re-en. Sec. 5720, R.C.M. 1921; re-en. Sec. 5720, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1977; R.C.M. 1947, 48-126.**

Cross-References

Clerk of Court — duties generally, Title 3, ch. 5, part 5.

Definition and examples of disputable presumptions, 26-1-602.

40-1-323. Proof of solemnized marriage when no record. If the record of the solemnization of a marriage heretofore entered into has been lost or destroyed and not known to exist, the parties may join in a written declaration of such marriage, substantially showing:

(1) the names, ages, and residences of the parties;

(2) the date and place of marriage and other pertinent facts of the marriage;

(3) that the record of the solemnized marriage has become lost or destroyed, as the case may be, and is not known to exist.

History: En. Sec. 86, Civ. C. 1895; re-en. Sec. 3632, Rev. C. 1907; re-en. Sec. 5725, R.C.M. 1921; Cal. Civ. C. Sec. 76; re-en. Sec. 5725, R.C.M. 1935; amd. Sec. 1, Ch. 276, L. 1959; R.C.M. 1947, 48-131.

Cross-References

Validity of common-law marriage, 40-1-403.

40-1-324. Declaration to be acknowledged and recorded. The written declaration of marriage provided for in 40-1-323 shall be attested by at least two witnesses and formally acknowledged by an official authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district court in the county of the residence of the parties shall serve as an official record of the marriage of the parties.

History: En. Sec. 87, Civ. C. 1895; re-en. Sec. 3633, Rev. C. 1907; re-en. Sec. 5726, R.C.M. 1921; Cal. Civ. C. Sec. 77; re-en. Sec. 5726, R.C.M. 1935; amd. Sec. 2, Ch. 276, L. 1959; R.C.M. 1947, 48-132.

Cross-References

Officers who may administer oaths, 1-6-101, 3-1-402.

Duties of Clerk of Court, Title 3, ch. 5, part 5.

Validity of common-law marriage, 40-1-403.

Part 4

Validity of Marriages — Declaration of Invalidity

40-1-401. Prohibited marriages. (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

History: En. 48-310 by Sec. 10, Ch. 536, L. 1975; R.C.M. 1947, 48-310.

Cross-References

Presumption of legitimacy, 26-1-602.

Legitimacy of children born in wedlock, 40-6-201.

Incest, 45-5-507.

Bigamy, 45-5-611.

Marrying a bigamist, 45-5-612.

Declaration of invalidity — vital statistics, 50-15-302.

40-1-402. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time that the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time that the marriage was entered into, the other party did not know of the incapacity;

(c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the consent of the party's parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party or the party's parent or guardian, prior to the time that the underaged party reaches the age at which the party could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support,

and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

(6) The clerk of the court shall give notice of the entry of a decree declaring the invalidity of a marriage:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of invalidity in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of invalidity in the appropriate record.

History: En. 48-311 by Sec. 11, Ch. 536, L. 1975; amd. Sec. 1, Ch. 279, L. 1977; R.C.M. 1947, 48-311; amd. Sec. 1, Ch. 109, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 109 inserted (6) providing that the Clerk of the Court give notice of the entry of the decree declaring the invalidity of a marriage; and made minor changes in style.

Cross-References

County Attorney — other duties, 7-4-2717.

Presumption of legitimacy, 26-1-602.

Who may contract, 28-2-201.

Consent in general, Title 28, ch. 2, part 3.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Proof of age and medical certificate required, 40-1-203.

Judicial approval, 40-1-213.

Defenses to divorce abolished, 40-4-105.

Legitimacy of children born in wedlock, 40-6-201.

Incest, 45-5-507.

Bigamy, 45-5-611.

Marrying a bigamist, 45-5-612.

Revocation of provision for spouse in will by divorce or annulment, 72-2-528.

40-1-403. Validity of common-law marriage. Common-law marriages are not invalidated by this chapter. Declarations of marriage pursuant to 40-1-311 through 40-1-313, 40-1-323, and 40-1-324 are not invalidated by this chapter.

History: En. 48-314 by Sec. 14, Ch. 536, L. 1975; R.C.M. 1947, 48-314.

Cross-References

Presumption of marriage, 26-1-602.

40-1-404. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (40-1-401) or declared invalid (40-1-402). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

History: En. 48-312 by Sec. 12, Ch. 536, L. 1975; R.C.M. 1947, 48-312.

Cross-References

"Good faith" defined, 30-1-201.

Obligation of good faith — U.C.C., 30-1-203.

Disposition of property, 40-4-202.

Maintenance, 40-4-203.

Child support, 40-4-204.

UPC — elective share of surviving spouse, Title 72, ch. 2, part 2.

UPC — spouse and children unprovided for in wills, Title 72, ch. 2, part 3.

UPC — effect of divorce, annulment, or separation decree, 72-2-812.

CHAPTER 2

HUSBAND AND WIFE

Part 1 — Joint Interests, Obligations, and Powers

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40-2-305 through 40-2-310 reserved.
40-2-311. Rights of husband and wife — how governed.
40-2-312. Marriage settlement contracts — how executed.
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40-2-314. Effect of recording.
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Part 4 — Battered Spouses Grant Programs (Renumbered by Code Commissioner, 1991)

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Part 6 — Uniform Premarital Agreement Act

40-2-601. Short title.
40-2-602. Application and construction.
40-2-603. Definitions.
40-2-604. Formalities.
40-2-605. Content.
40-2-606. When agreement becomes effective.
40-2-607. Amendment — revocation.
40-2-608. Enforcement.
40-2-609. Enforcement when marriage void.
40-2-610. Limitation of actions.

Chapter Cross-References

Residence of spouses, 1-1-215.

Tax law relating to family, 7-16-4105, 15-6-201, 15-7-307, 15-30-112, 15-30-113, 15-30-122, 15-30-123, 15-30-134, 15-30-142.

Person's residence presumed to be that of his family for voting purposes, 13-1-112.

Beneficiaries under PERS, 19-2-801, 19-2-802.

Civil procedure provisions relating to families, 25-9-102, 27-19-306, 70-19-102, 70-27-111.

Execution of judgment when family property and interest involved, Title 25, ch. 13.

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

When appeal may be taken, Rule 1(c), M.R.App.P., (see Title 25, ch. 21).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

No cause of action for alienation of affections, 27-1-601.

Contracts — what constitutes duress, 28-2-402, 28-2-403.

Agreement to marry to be in writing, 28-2-903.

Assignment of wages by married person, 31-1-306.

Labor law concerning family members, 31-1-306, 39-1-102 through 39-1-104, 39-2-101, 39-3-201, 39-3-203, 39-3-204, 39-3-406, 39-6-101, 39-6-102, 39-7-103; Title 39, ch. 7, part 2; 39-33-101 through 39-33-103, 53-7-201, 53-7-202.

Banking law concerning husband and wife, 32-1-107.

Insurable interest, Title 33, ch. 15, part 2.

Nursing by members of family, 37-8-103.

Payment of unemployment compensation, 39-51-102, 39-51-201 through 39-51-206, 39-51-601, 39-51-2301 through 39-51-2307.

Workers' compensation law relating to families, 39-71-116 through 39-71-120, 39-71-602, 39-71-723, 39-71-737, 39-71-741, 39-71-742, 39-71-2203.

General criminal provisions relating to families, 45-1-205, 45-2-101, 45-2-211.

Offenses against the person of a family member, 45-5-304, 45-5-507, 45-5-511, 45-5-602 through 45-5-604, 45-5-611, 45-5-612, 45-5-621 through 45-5-624, 50-20-104 through 50-20-108.

Offenses against public order by family members, 45-8-113, 45-8-344.

Criminal procedure provisions relating to family members, 46-16-212, 46-23-1022, 46-23-1102.

Human Rights, Title 49.

Discrimination based on marital status, 49-2-303, 49-3-103;.

Discrimination in insurance and retirement plans prohibited, 49-2-309.

Reporting of death, marriages, divorces, annulments, etc., 50-15-108.

General welfare provisions relating to the family, 53-2-101, 53-2-201, 53-2-206, 53-2-610; Title 53, ch. 3.

Automobile registration may be transferred to heir without letters of administration — when, 61-3-201.

Property law concerning husband and wife, 70-1-306, 70-1-307, 70-1-314, 70-1-404, 70-1-420, 70-1-422, 70-15-303.

Homesteads, Title 70, ch. 32.

Distribution of estate property, Title 72, ch. 3, part 9.

Housing Act of 1975, Title 90, ch. 6.

Part 1

Joint Interests, Obligations, and Powers

40-2-101. Mutual obligations of husband and wife. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

History: En. Sec. 210, Civ. C. 1895; re-en. Sec. 3690, Rev. C. 1907; re-en. Sec. 5782, R.C.M. 1921; Cal. Civ. C. Sec. 155; Field Civ. C. Sec. 75; re-en. Sec. 5782, R.C.M. 1935; R.C.M. 1947, 36-101.

Cross-References

Spousal privilege, 26-1-802.

How obligations arise, 28-1-102.

Contracts, Title 28, ch. 2, parts 2 and 3.

Competency of spouses, 46-16-212.

40-2-102. Duties of husband and wife as to support. Insofar as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the nonmonetary support provided by a spouse as homemaker.

History: **En. Sec. 212, Civ. C. 1895; re-en. Sec. 3692, Rev. C. 1907; re-en. Sec. 5784, R.C.M. 1921; Field Civ. C. Sec. 77; re-en. Sec. 5784, R.C.M. 1935; amd. Sec. 1, Ch. 293, L. 1975; R.C.M. 1947, 36-103.**

Cross-References

When husband's and wife's interests separate, 40-2-201.

Earnings and accumulations — same — when separated, 40-2-206.

Nonsupport, 45-5-621.

40-2-103. Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of his spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value thereof from the married person who has failed to provide such support.

History: **En. Sec. 244, Civ. C. 1895; re-en. Sec. 3724, Rev. C. 1907; re-en. Sec. 5800, R.C.M. 1921; Cal. Civ. C. Sec. 174; Field Civ. C. Sec. 84; re-en. Sec. 5800, R.C.M. 1935; amd. Sec. 12, Ch. 293, L. 1975; R.C.M. 1947, 36-119.**

Cross-References

Cases in which property may be attached, 27-18-101.

Agency, Title 28, ch. 10.

"Good faith" defined, 30-1-201.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

40-2-104. Liability of married person when abandoned by spouse. A married person abandoned by his spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified by the person's misconduct in abandoning him, nor is a married person liable for support of a spouse who is living separate from him by agreement, unless such support is stipulated in the agreement.

History: **En. Sec. 245, Civ. C. 1895; re-en. Sec. 3725, Rev. C. 1907; re-en. Sec. 5801, R.C.M. 1921; Cal. Civ. C. Sec. 175; Based on Field Civ. C. Sec. 85; re-en. Sec. 5801, R.C.M. 1935; amd. Sec. 13, Ch. 293, L. 1975; R.C.M. 1947, 36-120.**

Cross-References

Extent to which existing legal or moral obligation is good consideration, 28-2-802.

Separation agreement, 40-4-201.

Nonsupport, 45-5-621.

40-2-105. Husband and wife as joint tenants. A husband and wife may hold real or personal property together, jointly or in common.

History: **En. Sec. 217, Civ. C. 1895; re-en. Sec. 3697, Rev. C. 1907; re-en. Sec. 5789, R.C.M. 1921; Cal. Civ. C. Sec. 161; Field Civ. C. Sec. 82; re-en. Sec. 5789, R.C.M. 1935; R.C.M. 1947, 36-108.**

Cross-References

Joint obligations, Title 28, ch. 1, part 3.

Property joint tenancy and tenancy in common, Title 70, ch. 1, part 3.

40-2-106. Liability for acts or debts of spouse. Neither husband nor wife, as such, is answerable for the acts of the other or liable for the debts contracted by the other; provided, however, that the expenses for necessaries of the family and of the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

History: **En. Sec. 218, Civ. C. 1895; re-en. Sec. 3698, Rev. C. 1907; amd. Sec. 1, Ch. 129, L. 1915; re-en. Sec. 5790, R.C.M. 1921; re-en. Sec. 5790, R.C.M. 1935; R.C.M. 1947, 36-109.**

Cross-References

Judgment for or against married person, 25-9-102.

Redemption by debtor from spouse, 25-13-805.

Effect of redemption by debtor or debtor's spouse, 25-13-809.

Extent to which existing legal or moral obligation is good consideration, 28-2-802.

Obligations of parents for the support and education of their children, 40-6-211.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-2-107. May sue and be sued. A married person may sue and be sued in the same manner as if he were sole.

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887; re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R.C.M. 1921; re-en. Sec. 5809, R.C.M. 1935; amd. Sec. 15, Ch. 293, L. 1975; R.C.M. 1947, 36-128.

Cross-References

Capacity of married person to be a party, 25-5-201.

Who may defend when spouse sued, 25-5-202.

Judgment for or against married person, 25-9-102.

Capacity to sue or be sued, Rule 17(b), M.R.Civ.P. (see Title 25, ch. 20).

Spousal privilege, 26-1-802.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Action for wrongful death of adult, 27-1-513.

Who may sue for whose seduction, 27-1-514.

Cause of action for alienation of affections abolished, 27-1-601.

Testimony of spouse admissible in promotion of prostitution cases, 45-5-604.

40-2-108. Married person as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee and may bind himself and the estate he represents without any act or assent on the part of the person's spouse.

History: En. Sec. 1443, 5th Div. Comp. Stat. 1887; re-en. Sec. 252, Civ. C. 1895; re-en. Sec. 3732, Rev. C. 1907; re-en. Sec. 5808, R.C.M. 1921; re-en. Sec. 5808, R.C.M. 1935; amd. Sec. 14, Ch. 293, L. 1975; R.C.M. 1947, 36-127.

Cross-References

Personal representative — powers and duties, Title 72, ch. 3, part 6.

Conservators generally, Title 72, ch. 5, parts 1 and 4.

Guardians of minors, Title 72, ch. 5, part 2.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

Trust administration, Title 72, ch. 34.

40-2-109. Right of person to sue spouse for intentional tort. A person has a cause of action against his spouse for damages caused by the spouse's intentional tort against such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

History: En. Sec. 1, Ch. 407, L. 1979.

Cross-References

Capacity to sue or be sued, Rule 17(b), M.R.Civ.P. (see Title 25, ch. 20).

Liability, Title 27, ch. 1, part 7.

Duty of care, 28-1-201.

Part 2
Individual Property

40-2-201. When husband's and wife's interests separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling unless enjoined by a court.

History: **En. Sec. 213, Civ. C. 1895; re-en. Sec. 3693, Rev. C. 1907; re-en. Sec. 5785, R.C.M. 1921; Cal. Civ. C. Sec. 157; Field Civ. C. Sec. 78; re-en. Sec. 5785, R.C.M. 1935; R.C.M. 1947, 36-104; amd. Sec. 2, Ch. 407, L. 1979.**

40-2-202. Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is his individual property. The married person may, without consent, agreement, and signature of his spouse, convey and transfer his individual property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer thereof.

History: **En. Sec. 220, Civ. C. 1895; re-en. Sec. 3700, Rev. C. 1907; re-en. Sec. 5792, R.C.M. 1921; Cal. Civ. C. Sec. 162; amd. Sec. 1, Ch. 63, L. 1923; re-en. Sec. 5792, R.C.M. 1935; amd. Sec. 3, Ch. 293, L. 1975; R.C.M. 1947, 36-111.**

Cross-References

Dissolution — disposition of property, 40-4-202.

Transfer of property, Title 70, ch. 1, part 5; Title 70, ch. 20.

Married persons — execution of power in respect to real property, 70-15-303.

Power of attorney, estates and probate proceedings, Title 72, ch. 5, part 5.

40-2-203. Inventory of individual personal property of married person. A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property and recorded in the office of the county clerk of the county in which the person lives.

History: **En. Sec. 221, Civ. C. 1895; re-en. Sec. 3701, Rev. C. 1907; re-en. Sec. 5793, R.C.M. 1921; Cal. Civ. C. Sec. 165; re-en. Sec. 5793, R.C.M. 1935; amd. Sec. 4, Ch. 293, L. 1975; R.C.M. 1947, 36-112.**

Cross-References

Documents subject to recording, 7-4-2613.

Action for quieting title to personal property, 70-2-201.

Partition of personal property, 70-2-211.

40-2-204. Effect of filing inventory. The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the person so filing.

History: **En. Sec. 222, Civ. C. 1895; re-en. Sec. 3702, Rev. C. 1907; re-en. Sec. 5794, R.C.M. 1921; Cal. Civ. C. Sec. 166; re-en. Sec. 5794, R.C.M. 1935; amd. Sec. 5, Ch. 293, L. 1975; R.C.M. 1947, 36-113.**

40-2-205. Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: **En. Sec. 223, Civ. C. 1895; re-en. Sec. 3703, Rev. C. 1907; re-en. Sec. 5795, R.C.M. 1921; Cal. Civ. C. Sec. 168; re-en. Sec. 5795, R.C.M. 1935; amd. Sec. 6, Ch. 293, L. 1975; R.C.M. 1947, 36-114.**

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-206. Same — when separated. The earnings and accumulations of a married person and of his minor children living with him or in his custody, while he is living separate from his spouse, are the individual property of such person except that, to the extent that a mutual duty of support between the husband and wife as established by 40-2-102 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 224, Civ. C. 1895; re-en. Sec. 3704, Rev. C. 1907; re-en. Sec. 5796, R.C.M. 1921; Cal. Civ. C. Sec. 169; re-en. Sec. 5796, R.C.M. 1935; amd. Sec. 7, Ch. 293, L. 1975; R.C.M. 1947, 36-115.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Separation agreement, 40-4-201.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-207. Work and labor of married person. All work and labor performed by a married person for a person other than his spouse and children shall, unless there is a written agreement on his part to the contrary, be presumed to be performed on his separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children, as established by 40-2-205, 40-2-206, 40-2-209, and 40-2-210.

History: En. Sec. 1442, 5th Div. Comp. Stat. 1887; re-en. Sec. 225, Civ. C. 1895; re-en. Sec. 3705, Rev. C. 1907; re-en. Sec. 5797, R.C.M. 1921; re-en. Sec. 5797, R.C.M. 1935; amd. Sec. 8, Ch. 293, L. 1975; R.C.M. 1947, 36-116.

Cross-References

Assignment of wages by married person, 31-1-306.

Payment of wages generally, 39-3-204.

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-208. Debts of spouse contracted before marriage. The property of a married person is not liable for the debts of the person's spouse contracted before marriage.

History: En. Sec. 226, Civ. C. 1895; re-en. Sec. 3706, Rev. C. 1907; re-en. Sec. 5798, R.C.M. 1921; Cal. Civ. C. Sec. 170; re-en. Sec. 5798, R.C.M. 1935; amd. Sec. 9, Ch. 293, L. 1975; R.C.M. 1947, 36-117.

Cross-References

Redemption by debtor from spouse, 25-13-805.

Effect of redemption by debtor or debtor's spouse, 25-13-809.

Liability for acts or debts of spouse, 40-2-106.

Allowance to parent, 40-6-212.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

40-2-209. Individual property of married person — how far liable. Individual property of a married person listed in an inventory as provided in 40-2-203 and 40-2-204 or otherwise proved to be the individual property of the married person is exempt from all debts and liabilities of that person's spouse, except:

(1) when the debt or liability is for necessary articles procured for the use and benefit of the married person, the spouse, or minor children; or

(2) when the property is in the sole and exclusive possession of the spouse and the creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse.

History: En. Sec. 1, p. 369, Bannack Stat.; re-en. Sec. 1, p. 521, Cod. Stat. 1871; re-en. Sec. 866, 5th Div. Rev. Stat. 1879; re-en. Sec. 1432, 5th Div. Comp. Stat. 1887; amd. Sec. 227, Civ. C. 1895; re-en. Sec. 3707, Rev. C. 1907; re-en. Sec. 5799, R.C.M. 1921; Cal. Civ. C. Sec. 171; re-en. Sec. 5799, R.C.M. 1935; amd. Sec. 10, Ch. 293, L. 1975; R.C.M. 1947, 36-118.

Cross-References

Judgments for or against married person, 25-9-102.

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-210. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property are exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all such goods and services as are reasonably required to provide for the health, welfare, comfort, and education of the married person, his spouse, and minor children, taking into consideration the earnings, resources, and general standard of living of such persons.

History: En. 36-118.1 by Sec. 11, Ch. 293, L. 1975; R.C.M. 1947, 36-118.1.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

When parent liable for necessaries supplied to child, 40-6-215.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Part 3

Power of Married Persons to Contract

Part Cross-References

Contracts, Title 28, ch. 2 and 3.

40-2-301. Husband and wife may contract. Either husband or wife may enter into any engagement or transaction with the other or with any other person respecting property which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the provisions of this code relative to trusts.

History: En. Sec. 214, Civ. C. 1895; re-en. Sec. 3694, Rev. C. 1907; re-en. Sec. 5786, R.C.M. 1921; Cal. Civ. C. Sec. 158; Field Civ. C. Sec. 79; re-en. Sec. 5786, R.C.M. 1935; R.C.M. 1947, 36-105.

Cross-References

Who may contract, 28-2-201.

Mutual obligations of husband and wife, 40-2-101.

Separation agreement, 40-4-201.

Trust code, Title 72, ch. 33 through 36.

40-2-302. Liability of spouse. The contracts made by a married person in respect to his individual property, labor, or services shall not be binding upon the person's spouse nor render him or his property liable therefor; but the contracting person and that person's individual property shall be liable on such contracts in the same manner as if such person were sole.

History: En. Sec. 1446, 5th Div. Comp. Stat. 1887; re-en. Sec. 254, Civ. C. 1895; re-en. Sec. 3734, Rev. C. 1907; re-en. Sec. 5810, R.C.M. 1921; re-en. Sec. 5810, R.C.M. 1935; amd. Sec. 16, Ch. 293, L. 1975; R.C.M. 1947, 36-129.

Cross-References

Judgment for or against married person, 25-9-102.

Liability for acts or debts of spouse, 40-2-106.

40-2-303. Alteration of legal relation by contract — separation agreement. A husband and wife cannot by any contract with each other alter their legal relation, except as to property and except that they may agree, in writing, to an immediate separation and may make provision for the support of either of them and of their children during such separation.

History: En. Sec. 215, Civ. C. 1895; re-en. Sec. 3695, Rev. C. 1907; re-en. Sec. 5787, R.C.M. 1921; Cal. Civ. C. Sec. 159; Based on Field Civ. C. Sec. 80; re-en. Sec. 5787, R.C.M. 1935; R.C.M. 1947, 36-106.

Cross-References

What is unlawful, 28-2-701.

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

What contracts must be in writing, 28-2-903.

Legal separation, 40-4-104.

Separation agreement, 40-4-201.

Waiver of rights by spouse, 72-2-224.

40-2-304. Consideration for separation. The mutual consent of the parties is a sufficient consideration for such an agreement as mentioned in 40-2-303.

History: En. Sec. 216, Civ. C. 1895; re-en. Sec. 3696, Rev. C. 1907; re-en. Sec. 5788, R.C.M. 1921; Cal. Civ. C. Sec. 160; Field Civ. C. Sec. 81; re-en. Sec. 5788, R.C.M. 1935; R.C.M. 1947, 36-107.

Cross-References

What constitutes good consideration, 28-2-801.

40-2-305 through 40-2-310 reserved.

40-2-311. Rights of husband and wife — how governed. The property rights of the husband and wife are governed by parts 1 through 3 of this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

History: **En. Sec. 247, Civ. C. 1895; re-en. Sec. 3727, Rev. C. 1907; re-en. Sec. 5803, R.C.M. 1921; Cal. Civ. C. Sec. 177; re-en. Sec. 5803, R.C.M. 1935; R.C.M. 1947, 36-122.**

Cross-References

Separation agreement, 40-4-201.

Disposition of property, 40-4-202.

40-2-312. Marriage settlement contracts — how executed. Except as provided in part 6 of this chapter, all contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

History: **En. Sec. 248, Civ. C. 1895; re-en. Sec. 3728, Rev. C. 1907; re-en. Sec. 5804, R.C.M. 1921; Cal. Civ. C. Sec. 178; re-en. Sec. 5804, R.C.M. 1935; R.C.M. 1947, 36-123; amd. Sec. 11, Ch. 189, L. 1987.**

Cross-References

What contracts must be in writing, 28-2-903.

Separation agreement, 40-4-201.

40-2-313. Repealed. Sec. 14, Ch. 189, L. 1987.

History: **En. Sec. 249, Civ. C. 1895; re-en. Sec. 3729, Rev. C. 1907; re-en. Sec. 5805, R.C.M. 1921; Cal. Civ. C. Sec. 179; re-en. Sec. 5805, R.C.M. 1935; R.C.M. 1947, 36-124.**

40-2-314. Effect of recording. Except as provided in part 6 of this chapter, the recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property.

History: **En. Sec. 250, Civ. C. 1895; re-en. Sec. 3730, Rev. C. 1907; re-en. Sec. 5806, R.C.M. 1921; Cal. Civ. C. Sec. 180; re-en. Sec. 5806, R.C.M. 1935; R.C.M. 1947, 36-125; amd. Sec. 12, Ch. 189, L. 1987.**

Cross-References

Effect of recording, Title 70, ch. 21, part 3.

40-2-315. Marriage settlement by minors. A minor capable of contracting marriage may make a valid marriage settlement, as herein provided.

History: **En. Sec. 251, Civ. C. 1895; re-en. Sec. 3731, Rev. C. 1907; re-en. Sec. 5807, R.C.M. 1921; Cal. Civ. C. Sec. 181; re-en. Sec. 5807, R.C.M. 1935; R.C.M. 1947, 36-126.**

Cross-References

Minor cannot disaffirm certain obligations, 41-1-306.

Part 4

Battered Spouses Grant Programs (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

40-2-401.	Renumbered 52-6-101.
40-2-402.	Renumbered 52-6-102.
40-2-403.	Renumbered 52-6-103.
40-2-404.	Renumbered 52-6-104.
40-2-405.	Renumbered 52-6-105.

Part 5 reserved

Part 6

Uniform Premarital Agreement Act

40-2-601. Short title. This part may be cited as the "Uniform Premarital Agreement Act".

History: **En. Sec. 1, Ch. 189, L. 1987.**

40-2-602. Application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

History: En. Sec. 2, Ch. 189, L. 1987.

40-2-603. Definitions. As used in this part, the following definitions apply:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

History: En. Sec. 3, Ch. 189, L. 1987.

40-2-604. Formalities. A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

History: En. Sec. 4, Ch. 189, L. 1987.

40-2-605. Content. (1) Parties to a premarital agreement may contract with respect to:

(a) the rights and obligations of each of the parties in any of the property of either or both of them, whenever and wherever acquired or located;

(b) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(c) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(d) the modification or elimination of spousal support;

(e) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(f) the ownership rights in and disposition of the death benefit from a life insurance policy;

(g) the choice of law governing the construction of the agreement; and

(h) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement.

History: En. Sec. 5, Ch. 189, L. 1987.

40-2-606. When agreement becomes effective. A premarital agreement becomes effective upon marriage.

History: En. Sec. 6, Ch. 189, L. 1987.

40-2-607. Amendment — revocation. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by both parties. The amended agreement or the revocation is enforceable without consideration.

History: En. Sec. 7, Ch. 189, L. 1987.

40-2-608. Enforcement. (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) that party did not execute the agreement voluntarily; or

(b) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement must be decided by the court as a matter of law.

History: En. Sec. 8, Ch. 189, L. 1987.

40-2-609. Enforcement when marriage void. If a marriage is declared invalid, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

History: En. Sec. 9, Ch. 189, L. 1987.

40-2-610. Limitation of actions. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

History: En. Sec. 10, Ch. 189, L. 1987.

CHAPTER 3

RECONCILIATION

Part 1 — Montana Conciliation Law

40-3-101. Citation.
40-3-102. Purposes.
40-3-103. Use of shall and may.
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40-3-111. Conciliation court — jurisdiction.
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40-3-121. Filing of petition.
40-3-122. Petition form and contents.
40-3-123. No fees.
40-3-124. Manner of conciliation.
40-3-125. Hearings.

40-3-126. Orders — reconciliation agreement.
40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect.

Part 1
Montana Conciliation Law

40-3-101. Citation. This chapter may be cited as the "Montana Conciliation Law".

History: En. Sec. 1, Ch. 238, L. 1963; R.C.M. 1947, 36-201.

40-3-102. Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(1).

Cross-References

Rights and obligations of minors, Title 41, ch. 1.

40-3-103. Use of shall and may. As used in this chapter "shall" is mandatory and "may" is permissive.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(2).

40-3-104. Application. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(3).

Cross-References

District Court — powers respecting conduct of business, 3-1-111.

District Court — means to carry jurisdiction into effect, 3-1-113.

40-3-105 through 40-3-110 reserved.

40-3-111. Conciliation court — jurisdiction. (1) Each district court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court".

(2) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(3) Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for dissolution, annulment, or separate maintenance but there is no minor child whose welfare may be affected by the results of the controversy and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

(4) The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, Title 3, chapter 5, parts 1 through 4, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: (1), (4)En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; Sec. 36-203, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; Sec. 36-204, R.C.M. 1947; R.C.M. 1947, 36-203(1), (8), 36-204(1), (13).

Cross-References

District Court — jurisdiction, Art. VII, sec. 4, Mont. Const.

Means to carry jurisdiction into effect, 3-1-113.

Child abuse, neglect, and dependency — jurisdiction and venue, 41-3-103.

Youth Court — jurisdiction, Title 41, ch. 5, part 2.

40-3-112. Selection of judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(2).

40-3-113. Transfer of cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(3).

Cross-References

Transfer when judge unable to hear motion or return of order, 25-4-102.

40-3-114. Budget. The provisions of the county budget system, Title 7, chapter 6, part 23, shall, except as provided by 40-3-125(3), be applicable to expenditures for the court of conciliation.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(4); amd. Sec. 3, Ch. 405, L. 1979.

40-3-115. Probation officers' duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested and, in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(6).

Cross-References

Probation officers — appointment and supervision, 41-5-201, 41-5-701.

Powers and duties of probation officers, 41-5-401, 41-5-703.

Qualifications of probation officers, 41-5-702.

40-3-116. Privacy of hearings. (1) All district court hearings or conferences in proceedings under this chapter shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his counsel separately. In the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(7).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Sittings of court — when private, 3-1-313.

40-3-117 through 40-3-120 reserved.

40-3-121. Filing of petition. Prior to the filing of any action for dissolution, annulment, or separate maintenance, either spouse or both spouses may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(2).

40-3-122. Petition form and contents. (1) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of ....

Upon the petition of .... Petitioner	Petition for Conciliation (Under the Conciliation Court Law)

And concerning
.... and
....
Respondents.

To the Conciliation Court:

(2) The petition shall:

(a) allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) state the name and age of each minor child whose welfare may be affected by the controversy;

(c) state the name and address of the petitioner or the names and addresses of the petitioners;

(d) if the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

(e) also name as a respondent any other person who has any relation to the controversy and state the address of the person, if known to the petitioner;

(f) state such other information as the court may by rule require.

(3) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(3) thru (5).

40-3-123. No fees. No fee may be charged by any officer for filing the petition nor may any fee be charged by any officer for the performance of any duty pursuant to this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(6).

Cross-References

Fees of Clerk of District Court, 25-1-201.

40-3-124. Manner of conciliation. (1) The judge of the conciliation court may hear all matters invoked under this chapter, or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

(2) The conciliation counselor shall:

(a) hold conciliation conferences with parties to, and hearings in, proceedings under this chapter and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(5).

40-3-125. Hearings. (1) The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(2) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(3) The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(7) thru (9).

Cross-References

General rules regarding procedure, Title 3, ch. 1, part 3.

Sittings of court — when private, 3-1-313.

Terms and location of District Court, 3-5-401.

40-3-126. Orders — reconciliation agreement. (1) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event may such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(2) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

History: **En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(10).**

40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect. (1) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for dissolution, declaration of invalidity, or separate maintenance.

(2) If after the expiration of such period the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution, declaration of invalidity, or separate maintenance. The pendency of a dissolution, declaration of invalidity, or separate maintenance action may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(3) Whenever any action for dissolution, declaration of invalidity, or separate maintenance is filed in the district court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or declaration of invalidity of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

History: **En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(11), (12); amd. Sec. 169, Ch. 575, L. 1981.**

Cross-References

Declaration of invalidity, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

Maintenance, 40-4-203.

CHAPTER 4

TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT

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Chapter Cross-References

Proper place of trial — county in which petitioner has resided 90 days preceding the commencement of the action, 25-2-118.

Part 1
Separation — Dissolution of Marriage

Part Cross-References

Court proceedings may be private in divorce action, 3-1-313.

When divorce terminates right of interment, 35-21-420.

Displaced Homemaker Program, Title 39, ch. 7, part 3.

40-4-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) strengthen and preserve the integrity of marriage and safeguard family relationships;

(2) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(3) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(4) make reasonable provision for spouse and minor children during and after litigation; and

(5) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

Cross-References

Montana Conciliation Law, Title 40, ch. 3, part 1.

40-4-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-4-103. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties but shall provide that it affects the status previously existing between the parties in the manner decreed.

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Application of the Montana Rules of Civil Procedure, 40-1-105.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7, part 1.

40-4-104. Dissolution of marriage — legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

History: En. 48-316 by Sec. 16, Ch. 536, L. 1975; R.C.M. 1947, 48-316; amd. Sec. 1, Ch. 392, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

Proper place of trial — county in which petitioner has resided 90 days preceding commencement of action, 25-2-118.

Conciliation proceedings — effect on other proceedings, 40-3-127.

Support, custody, visitation, and related provisions, Title 40, ch. 4, part 2.

40-4-105. Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. No decree may be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

History: En. 48-317 by Sec. 17, Ch. 536, L. 1975; amd. Sec. 10, Ch. 33, L. 1977; R.C.M. 1947, 48-317.

Cross-References

Residence — rules for determining, 1-1-215.

Court proceeding may be private in divorce action, 3-1-313.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20.)

Application of Montana Rules of Civil Procedure, 40-1-105.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Montana Conciliation Law, Title 40, ch. 3, part 1.

Recordation of marriage, 50-15-301.

40-4-106. Renumbered 40-4-121 by Code Commissioner, 1985.

40-4-107. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of chapter 3 of this title, known as the Montana Conciliation Law.

History: En. 48-319 by Sec. 19, Ch. 536, L. 1975; R.C.M. 1947, 48-319.

Cross-References

Cause of action for alienation of affections abolished, 27-1-601.

Conciliation court — jurisdiction, 40-3-111.

Privacy of hearings, 40-3-116.

Manner of conciliation, 40-3-124.

40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree that dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of the court shall give notice of the entry of a decree of dissolution:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered, who shall enter the fact of dissolution in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that the official enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order the wife's maiden name or a former name restored.

History: En. 48-328 by Sec. 28, Ch. 536, L. 1975; amd. Sec. 1, Ch. 174, L. 1977; R.C.M. 1947, 48-328; amd. Sec. 2, Ch. 109, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 109 in (3), after "dissolution", deleted "or legal separation"; in (3)(a), after "dissolution", deleted "or separation"; and made minor changes in style.

Cross-References

Clerk of Court — general duties, 3-5-501.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Change of name, Title 27, ch. 31.

When divorce terminates right of interment, 35-21-420.

Decree of dissolution — vital statistics, 50-15-302.

Revocation of provision for spouse in will by divorce or annulment, 72-2-528.

40-4-109. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended but he may move the court to grant an appropriate order.

History: En. 48-329 by Sec. 29, Ch. 536, L. 1975; R.C.M. 1947, 48-329.

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

Visitation, 40-4-217.

40-4-110. Costs — attorney's fees. The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 of this title and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

History: En. 48-327 by Sec. 27, Ch. 536, L. 1975; R.C.M. 1947, 48-327.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Representation of child, 40-4-205.

Modification, 40-4-219.

40-4-111 through 40-4-120 reserved.

40-4-121. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court;

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment;

(f) providing other injunctive relief proper in the circumstances; and

(g) providing additional relief available under Title 40, chapter 15.

(3) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

(7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(8) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(b) terminates upon order of the court or when the petition is voluntarily dismissed; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

(9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown.

History: En. 48-318 by Sec. 18, Ch. 536, L. 1975; R.C.M. 1947, 48-318; amd. Sec. 1, Ch. 180, L. 1981; amd. Sec. 4, Ch. 526, L. 1985; Sec. 40-4-106, MCA 1983; redes. 40-4-121 by Code Commissioner, 1985; amd. Sec. 1, Ch. 259, L. 1991; amd. Sec. 2, Ch. 292, L. 1993; amd. Sec. 1, Ch. 425, L. 1993; amd. Sec. 5, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 inserted (2)(g) regarding relief available under Title 40, chapter 15; deleted (3)(a)(i) that read: "(a)(i) alleging physical abuse, harm, or bodily injury against the petitioner by a family member or partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family member or partner that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat"; deleted (3)(a)(ii) that read: "(ii) alleging a violation of 45-5-220"; at end of (3) deleted third sentence that read: "Persons who may request relief under this subsection include family members, partners, and persons alleging a violation of 45-5-220"; deleted former (7) that read: "(7) If the court determines, on the basis of a party's history of violence and the testimony presented at the hearing or on the basis of credible evidence that a party has violated 45-5-220, that the other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may order that the injunction be effective permanently"; deleted former (8) that read: "(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the other party may suffer permanent injury or harm if a permanent injunction is not issued. A permanent injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that the party has violated 45-5-220 if the court determines that the stalked party needs permanent protection"; deleted former (9) that read: "(9) Except when the alleged conduct to be restrained is a violation of 45-5-220, restraining orders issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a)"; in (8), after "injunction", substituted "entered pursuant to Title 40, chapter 15, or this section" for "or permanent injunction"; in (8)(a), at end, deleted "or order under Title 27, chapter 19, part 3, as appropriate"; deleted (13) that read: "(13) As used in this section, the following definitions apply:

(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex"; and made minor changes in style.

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

How preventive relief is given, 27-1-403.

When preliminary injunction may be granted, 27-19-201.

Procedure for obtaining preliminary injunction, Title 27, ch. 19, part 3.

Temporary custody orders, 40-4-213.

Criminal offense of domestic abuse, 45-5-206.

Sexual intercourse without consent, 45-5-503.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

Circumstances in which a peace officer may make arrests, 46-6-210.

Written report when no arrest made in domestic violence situation, 46-6-601.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-602.

Bringing arrested person before a court, 46-7-101.

Bail — exception for domestic abuse, 46-9-302.

Battered spouses grant program, Title 52, ch. 6, part 1.

40-4-122. Forms — distribution — filing. The attorney general shall prepare uniform sample instructions and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-121 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the clerk of the district court in each county and to justice, city, and municipal courts. The clerk of the district court, justices of the peace, city, and municipal courts shall make forms available to the public at no charge.

History: En. Sec. 5, Ch. 526, L. 1985; amd. Sec. 2, Ch. 208, L. 1989.

40-4-123. Jurisdiction and venue. (1) District courts, municipal courts, justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121.

(2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage or for child custody is pending between the parties. From the time of the certification of the pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced in district court.

(3) An action brought under 40-4-121 may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse.

History: En. Sec. 6, Ch. 526, L. 1985; amd. Sec. 3, Ch. 208, L. 1989; amd. Sec. 6, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 in (1) and (3) changed "40-4-121(3)" to "40-4-121"; and made minor changes in style.

Cross-References

Montana Justice and City Court Rules of Civil Procedure, M.J.C.C.R.Civ.P., Title 25, ch. 23.

Appeal to District Court from Justice's Court, Rule 24, M.J.C.C.R.Civ.P. (see Title 25, ch. 23).

Procedure in Municipal Courts, Title 25, ch. 30.

Procedure in Justices' Courts, Title 25, ch. 31.

Declaration of invalidity, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

Child custody, 40-4-211 through 40-4-225.

Violation of protective order a misdemeanor, 45-5-626.

40-4-124. Review or removal — district court. (1) An order issued by a municipal court, justice's court, or city court pursuant to 40-4-121 is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court, justice's court, or city court made pursuant to 40-4-121.

(2) Any case in which an order has been issued by a municipal court, justice's court, or city court pursuant to 40-4-121 may be removed to district court upon filing of a notice of removal.

History: En. Sec. 7, Ch. 526, L. 1985; amd. Sec. 4, Ch. 208, L. 1989; amd. Sec. 7, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 in (1), in two places, and in (2) changed "40-4-121(3)" to "40-4-121"; and made minor changes in style.

Cross-References

Appeal to District Court from Justice's Court, Rule 24, M.J.C.C.R.Civ.P. (see Title 25, ch. 23).

40-4-125. Registration of orders. (1) The clerk of court, justice of the peace, municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-4-121, mail a copy of the order or any extension, modification, or termination thereof along with a copy of the proof of service to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of a protective order are informed of the existence and terms of such order.

History: En. Sec. 8, Ch. 526, L. 1985; amd. Sec. 5, Ch. 208, L. 1989.

Cross-References

Violation of protective order a misdemeanor, 45-5-626.

40-4-126 through 40-4-129 reserved.

40-4-130. Summary dissolution — conditions necessary at commencement of proceedings. A marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136 if all of the following conditions exist on the date the proceeding is commenced:

(1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both parties agree that the marriage should be dissolved.

(3) There are no children from the relationship born before or during the marriage or adopted by the parties during the marriage, and the wife is not pregnant.

(4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

(b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by either party if the lease does not include an option to purchase and if it terminates within 1 year from the date of the filing of the petition.

(5) There are no unpaid obligations in excess of $4,000 incurred by either or both of the parties after the date of their marriage, excluding the amount of any unpaid obligations with respect to a motor vehicle with a rated carrying load in persons and property of 1 ton or less.

(6) The total fair market value of property assets, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less, is less than $13,000, and neither party has separate property assets in excess of $13,000, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities and have duly executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any right to maintenance.

(9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the dissolution.

(10) The parties have read and state that they understand the contents of the summary dissolution brochure provided for in 40-4-136.

(11) The parties desire that the court dissolve the marriage.

History: En. Sec. 1, Ch. 795, L. 1991.

40-4-131. Joint petition — filing — form — contents. (1) A proceeding for summary dissolution of marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.

(2) The petition must:

(a) be signed under oath by both parties;

(b) state that, as of the date of the filing of the joint petition, each condition set forth in 40-4-130 has been met;

(c) state the mailing address of both parties; and

(d) state whether or not the wife elects to have her maiden or former name restored and, if so, state the name to be restored.

History: En. Sec. 2, Ch. 795, L. 1991.

40-4-132. Revocation of joint petition — termination of proceeding — notice — copy to other party. (1) At any time prior to the entry of final judgment, either party to the marriage may revoke the joint petition and thereby terminate the summary dissolution proceeding filed pursuant to 40-4-130 through 40-4-136.

(2) The revocation is effected by filing with the clerk of the court in which the proceeding was commenced a notice of revocation in the form and content prescribed by the district court.

(3) The revoking party shall send a copy of the notice of revocation to the last-known address of the other party by first-class mail, postage prepaid.

History: En. Sec. 3, Ch. 795, L. 1991.

40-4-133. Hearing and final judgment — entry — effect. After 20 days from the date of the filing of the joint petition for summary dissolution, the district court shall hold a hearing at which both parties must be present, and if the court determines that the conditions in 40-4-130 exist, the court shall enter the final judgment dissolving the marriage. Entry of final judgment restores each party to the status of a single person and permits either to marry.

History: En. Sec. 4, Ch. 795, L. 1991.

40-4-134. Final judgment as final adjudication of rights and obligations. Except as provided in 40-4-135, entry of final judgment constitutes a final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights and constitutes a waiver of their respective rights to maintenance, rights to appeal the terms of the dissolution, and rights to a new trial.

History: En. Sec. 5, Ch. 795, L. 1991.

40-4-135. Actions to set aside final judgment. (1) A final judgment made pursuant to 40-4-133 does not prejudice or bar the rights of either party to institute an action to set aside the final judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to the Montana Rules of Civil Procedure.

(2) The district court shall set aside a final judgment made pursuant to 40-4-133 regarding all matters except the status of the marriage upon proof that the parties did not meet the requirements of 40-4-130 on the date the petition was filed.

History: En. Sec. 6, Ch. 795, L. 1991.

40-4-136. Brochure to describe proceedings — availability — distribution — contents and form. (1) Each district court shall make available a brochure, prepared and distributed by the attorney general, describing the requirements, nature, and effect of proceedings under 40-4-130 through 40-4-136.

(2) (a) In nontechnical language, the brochure must:

(i) state that it is in the best interests of the parties to consult an attorney regarding the dissolution of their marriage. The services of an attorney may be obtained through lawyer referral services, group or prepaid legal services, or legal aid organizations.

(ii) state that the brochure is not intended as a guide for self-representation in proceedings under 40-4-130 through 40-4-136 and should not be relied upon exclusively by the parties;

(iii) provide a concise summary of the provisions of 40-4-104 and 40-4-130 through 40-4-136;

(iv) describe the nature of services of the conciliation court, if available;

(v) state that under the provisions of 40-4-130 through 40-4-136, neither party to the marriage may obtain maintenance from the other;

(vi) state in boldface type that, upon entry of final judgment, the parties' rights and obligations with respect to the marriage, including property and maintenance rights, are permanently adjudicated without right of appeal but that neither party is barred from instituting an action to set aside the final judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to the Montana Rules of Civil Procedure; and

(vii) state that until final judgment is entered, the parties retain the status of married persons and cannot remarry.

(b) The brochure may include other matters that the attorney general considers appropriate.

History: En. Sec. 7, Ch. 795, L. 1991.

Part 2

Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

History: En. 48-320 by Sec. 20, Ch. 536, L. 1975; R.C.M. 1947, 48-320.

Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Contempts, Title 3, ch. 1, part 5.

What acts or omissions are contempts, 3-1-501.

Procedure — contempt not in presence of the court, 3-1-512.

Imprisonment to compel performance, 3-1-520.

Judgments, Title 25, ch. 9.

Assignment of right to periodic installments for certain future damages, 25-9-405.

Execution of judgment, Title 25, ch. 13.

Breach of contract, 27-1-311.

Specific and preventive relief, Title 27, ch. 1, part 4.

Unconscionable contract or clause, 30-2-302.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Consideration for separation, 40-2-304.

40-4-202. Division of property. (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

(a) the property laws of this state;

(b) the income tax laws of this state; and

(c) the federal income tax laws.

(5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.

History: En. 48-321 by Sec. 21, Ch. 536, L. 1975; R.C.M. 1947, 48-321; amd. Sec. 1, Ch. 613, L. 1983; amd. Sec. 13, Ch. 189, L. 1987.

Cross-References

Individual income tax, Title 15, ch. 30.

Duties of husband and wife as to support, 40-2-102.

Individual property, Title 40, ch. 2, part 2.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Property rights of husband and wife — how governed, 40-2-311.

Marriage settlement contracts — how executed, 40-2-312.

Dissolution of marriage — legal separation, 40-4-104.

Best interest of children, 40-4-212.

Trust code, Title 72, ch. 33 through 36.

40-4-203. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs; and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

History: En. 48-322 by Sec. 22, Ch. 536, L. 1975; R.C.M. 1947, 48-322.

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Earnings of judgment debtor — exemption from execution for maintenance, 25-13-614.

Individual property, Title 40, ch. 2, part 2.

Necessity determined by standard of living, 40-2-210.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

40-4-204. Child support — orders to address health insurance — withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living that the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obligor may be retained by the obligee when it exceeds the obligor's monthly support obligation if the excess support is a result of annualized withholding.

(6) For the purposes of income withholding under subsection (5), each district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

History: En. 48-323 by Sec. 23, Ch. 536, L. 1975; R.C.M. 1947, 48-323; amd. Sec. 1, Ch. 590, L. 1983; amd. Sec. 1, Ch. 727, L. 1985; (3)En. Sec. 1, Ch. 434, L. 1985; (4)En. Sec. 1, Ch. 651, L. 1985; amd. Sec. 1, Ch. 702, L. 1989; amd. Sec. 4, Ch. 266, L. 1991; amd. Sec. 1, Ch. 635, L. 1991; amd. Sec. 1, Ch. 294, L. 1993; amd. Sec. 7, Ch. 631, L. 1993; amd. Sec. 7, Ch. 60, L. 1995; amd. Sec. 27, Ch. 504, L. 1995; amd. Sec. 118, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 60 in (3)(b), at end of first sentence, deleted "that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case"; in (5)(c) inserted second sentence allowing retention of excess support if the excess is the result of annualized withholding; and made minor changes in style.

Chapter 504 in (4), after "Each", inserted "temporary or final", after "establishing a" deleted "final", and after "include a" substituted "medical support order as provided for in Title 40, chapter 5, part 8" for "provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation"; deleted former (7) that read: "(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 throughout section substituted "department of public health and human services" for "department of social and rehabilitation services"; and at beginning of (5)(c) deleted "After October 1, 1993". Amendment effective July 1, 1995.

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Earnings of judgment debtor — exemption from execution for support, 25-13-614.

Necessity determined by standard of living, 40-2-210.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Enforcement of support, Title 40, ch. 5.

Judgment or order — parent and child relationship, 40-6-116.

Obligations of parents, Title 40, ch. 6, part 2.

Allowance to parent, 40-6-212.

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

Parental control over property of child, 40-6-232.

40-4-205. Representation of child. (1) The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's support, custody, and visitation. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose.

(2) The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's support, custody, and visitation;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to make written reports to the court concerning the child's support, custody, and visitation;

(d) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's support, custody, and visitation; and

(e) to perform other duties as directed by the court.

(3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians.

(4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived.

History: En. 48-324 by Sec. 24, Ch. 536, L. 1975; R.C.M. 1947, 48-324; amd. Sec. 1, Ch. 93, L. 1979; amd. Sec. 1, Ch. 434, L. 1993; amd. Sec. 4, Ch. 394, L. 1995; amd. Sec. 119, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 394 in (1), in first sentence, substituted "guardian ad litem" for "attorney" and inserted second sentence that read: "The guardian ad litem may be an attorney"; inserted (2) concerning the general duties of a guardian ad litem; inserted (3) concerning a guardian ad litem's access to various records; in (4), after "child's", substituted "guardian ad litem" for "attorney"; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 546 substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Costs — attorney's fees, 40-4-110.
Enforcement of minor's rights, 41-1-202.

40-4-206. Payment of maintenance or support to court — handling fee of clerk. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. The clerk may charge the payor a handling fee of $2 a payment, which must be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid into such fund.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

History: En. 48-325 by Sec. 25, Ch. 536, L. 1975; R.C.M. 1947, 48-325; amd. Sec. 1, Ch. 532, L. 1985.

Cross-References

Contempts, Title 3, ch. 1, part 5.
Duties of Clerk of Court, 3-5-501.
Assignment of right to periodic installments for certain future damages, 25-9-405.
Paternity — enforcement of judgment or order, 40-6-117.
Duties of trustees, Title 72, ch. 34, part 1.

40-4-207. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding $1 as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

History: En. 48-326 by Sec. 26, Ch. 536, L. 1975; R.C.M. 1947, 48-326.

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Property exempt from execution — earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Powers of trustees, Title 72, ch. 34, part 3.

40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of public health and human services, whenever the department of public health and human services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(c) The nonexistence of a medical support order as defined in 40-5-804 or a violation of a medical support order justifies an immediate modification of child support in order to:

(i) provide for the actual or anticipated costs of the child's medical care;

(ii) provide or maintain a health benefit plan or individual health insurance coverage for the child; or

(iii) eliminate any credit for a medical support obligation when it has been permitted or used as a credit in the determination of the child support obligation.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Provisions for the support of a child are terminated by emancipation of the child or the child's graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree. Provisions for the

support of a child do not terminate upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

History: En. 48-330 by Sec. 30, Ch. 536, L. 1975; R.C.M. 1947, 48-330; amd. Sec. 1, Ch. 464, L. 1979; amd. Sec. 1, Ch. 212, L. 1987; amd. Sec. 27, Ch. 549, L. 1989; amd. Sec. 28, Ch. 702, L. 1989; amd. Sec. 1, Ch. 342, L. 1991; amd. Sec. 28, Ch. 504, L. 1995; amd. Sec. 120, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 504 inserted (2)(c) concerning modification of a child support order due to nonexistence or violation of a medical support order. Amendment effective July 1, 1995.

Chapter 546 in (2)(b)(iii), in two places, substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Cross-References

Unconscionable contract or clause, 30-2-302.

Temporary order or temporary injunction, 40-4-121.

Remedy when parent dies without providing for support of child, 40-6-213.

Minors and adults defined, 41-1-101.

Claims against decedent, 72-3-104.

Creditors' claims, Title 72, ch. 3, part 8.

40-4-209. Security or guaranty to secure support. (1) Upon a verified application that is made by a person authorized to enforce or collect a child support obligation or by the department of public health and human services and that shows that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that the obligated person post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring the obligated person to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department of public health and human services shall adopt guidelines that take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department of public health and human services determines an application for an order requiring security is not appropriate, it may not request the order.

History: En. Sec. 1, Ch. 521, L. 1985; amd. Sec. 98, Ch. 370, L. 1987; amd. Sec. 26, Ch. 609, L. 1987; amd. Sec. 20, Ch. 702, L. 1989; amd. Sec. 121, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of family services or the department of social and rehabilitation services"; in (5), in two places, substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Evidence on motions, Rule 43(e), M.R.Civ.P. (see Title 25, ch. 20).

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Mortgages, Title 71, ch. 1.

40-4-210. Child support jurisdiction — nonresident individual. A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator in a child support determination in the initial or modification decree if:

(1) the individual is personally served with notice within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(3) the individual has resided with the child within this state;

(4) the child was adopted within this state when at least one parent was a resident;

(5) the individual resided in this state and provided prenatal expenses or support for the child;

(6) the child resides in this state as a result of the acts or directives of the individual;

(7) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

History: En. Sec. 1, Ch. 459, L. 1989; amd. Sec. 52, Ch. 328, L. 1993.

Cross-References

Residence — rules for determining, 1-1-215.

Means to carry jurisdiction into effect, 3-1-113.

District Court jurisdiction, Title 3, ch. 5, part 3.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Lack of jurisdiction as defense, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Child support, 40-4-204.

Obligations of parents for the support of their children, 40-6-211.

40-4-211. Child custody jurisdiction — commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsections (1)(a), (1)(b), or (1)(c) of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

History: En. 48-331 by Sec. 31, Ch. 536, L. 1975; amd. Sec. 11, Ch. 33, L. 1977; amd. Sec. 27, Ch. 537, L. 1977; R.C.M. 1947, 48-331.

Cross-References

Residence — rules for determining, 1-1-215.

Means to carry jurisdiction into effect, 3-1-113.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Permissive intervention, Rule 24(b), M.R.Civ.P. (see Title 25, ch. 20).

When custody may be awarded without dissolution proceedings, 40-6-224.

Uniform Child Custody Jurisdiction Act — jurisdiction, 40-7-104.

Jurisdiction and venue — abused, neglected, and dependent youths, 41-3-103.

40-4-212. Best interest of child. (1) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

(a) the wishes of the child's parent or parents as to custody;

(b) the wishes of the child as to a custodian;

(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who may significantly affect the child's best interest;

(d) the child's adjustment to home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) Custody should be granted to the parent who has provided most of the primary care during the child's life.

(b) A custody action brought by a parent within 6 months after a child support action against that parent is vexatious.

(4) The following are rebuttable presumptions:

(a) A knowing failure to pay birth-related costs that the person is able to pay is not in the best interest of the child.

(b) Failure to pay child support that the person is able to pay is not in the best interest of a child in need of the child support.

History: En. 48-332 by Sec. 32, Ch. 536, L. 1975; R.C.M. 1947, 48-332; amd. Sec. 1, Ch. 379, L. 1987; amd. Sec. 1, Ch. 303, L. 1989; amd. Sec. 1, Ch. 467, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 467 inserted (3) concerning rebuttable presumptions that apply unless contrary to best interest of child; inserted (4) concerning rebuttable presumptions related to birth costs and child support; and made minor changes in style. Amendment effective April 15, 1995.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

Guardians of minors, Title 72, ch. 5, part 2.

40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

History: En. 48-333 by Sec. 33, Ch. 536, L. 1975; amd. Sec. 12, Ch. 33, L. 1977; R.C.M. 1947, 48-333; amd. Sec. 1, Ch. 410, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Custody of children where husband and wife living separately, 40-6-222.

When custody may be awarded without dissolution proceedings, 40-6-224.

Declaration of purpose of Youth Court Act, 41-5-102.

40-4-214. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

History: En. 48-334 by Sec. 34, Ch. 536, L. 1975; R.C.M. 1947, 48-334.

Cross-References

Sittings of court — when private, 3-1-313.

Court reporters — duties, 3-5-603.

Expert witnesses' fees, 26-2-505.

Expert witness, Art. VII, M.R.Ev. (see Title 26, ch. 10).

What constitutes undue influence, 28-2-407.

40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial arrangements for the child. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or public assistance and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order.

(2) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian. The child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The

investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

History: En. 48-335 by Sec. 35, Ch. 536, L. 1975; R.C.M. 1947, 48-335; amd. Sec. 1, Ch. 277, L. 1981; amd. Sec. 1, Ch. 624, L. 1987; amd. Sec. 2, Ch. 434, L. 1993; amd. Sec. 7, Ch. 561, L. 1993; amd. Sec. 48, Ch. 18, L. 1995; amd. Sec. 122, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 18 in second sentence of (1), after "food stamps", substituted "or public assistance" for "or general relief benefits".

Chapter 546 in (1), in second sentence, substituted "department of public health and human services" for "department of family services" and after "food stamps" deleted "[or general relief benefits]"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Expert witnesses, Art. VII, M.R.Ev. (see Title 26, ch. 10).

Consent in general, Title 28, ch. 2, part 3.

When parent may bring action for the exclusive control of the children — decree, 40-6-223.

40-4-216. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record.

History: En. 48-336 by Sec. 36, Ch. 536, L. 1975; R.C.M. 1947, 48-336.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Sittings of court — when private, 3-1-313.

Costs, Title 25, ch. 10.

Allowable costs, Title 25, ch. 10, part 2.

Costs — attorney's fees, 40-4-110.

Hearings and studies in another state — orders to appear, 40-7-120.

Priority of custody proceedings, 40-7-125.

40-4-217. Visitation. (1) A parent who is not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; however, the court may not restrict a parent's visitation rights unless it finds that the

visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) As long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of the parent's visitation schedule.

(6) (a) If a noncustodial parent or other person residing in the noncustodial parent's household has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent has 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625.

History: En. 48-337 by Sec. 37, Ch. 536, L. 1975; R.C.M. 1947, 48-337; amd. Sec. 3, Ch. 17, L. 1979; amd. Sec. 1, Ch. 509, L. 1987; amd. Sec. 1, Ch. 405, L. 1989; amd. Sec. 8, Ch. 350, L. 1995; amd. Sec. 2, Ch. 467, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 350 in (6)(c)(ix), at beginning, substituted "partner or family member assault" for "domestic abuse"; and made minor changes in style.

Chapter 467 in (6)(a), near beginning after "parent", inserted "or other person residing in the noncustodial parent's household"; inserted (6)(c)(v) concerning deviate sexual conduct with an animal; and made minor changes in style. Amendment effective April 15, 1995.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Grandparent visitation rights, 40-9-102.

40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including the child's education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or the child's emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or the child's emotional development significantly impaired, the court may order the department of public health and human services to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

History: En. 48-338 by Sec. 38, Ch. 536, L. 1975; R.C.M. 1947, 48-338; amd. Sec. 12, Ch. 609, L. 1987; amd. Sec. 123, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Obligations of parents for the support and education of their children, 40-6-211.

Right of parent to determine the residence of child, 40-6-231.

Endangering the welfare of children, 45-5-622.

Child welfare services, Title 52, ch. 2, part 1.

40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or the child's custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously the child's physical, mental, moral, or emotional health and that the harm likely to be caused by a change of environment is outweighed by its advantages to the child;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (8).

(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20 days from the notice to respond. If the other parent fails to respond within 20 days, the custody rights of the other parent are suspended until further order of the court. If the other parent responds and objects, a hearing must be held within 30 days of the response.

(b) The other parent has the burden at the hearing to prove that custody by the other parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;

(vi) incest, as described in 45-5-507;

(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(viii) endangering the welfare of children, as described in 45-5-622;

(ix) partner or family member assault of the type described in 45-5-206(1)(a);

(x) sexual abuse of children, as described in 45-5-625.

History: En. 48-339 by Sec. 39, Ch. 536, L. 1975; R.C.M. 1947, 48-339; amd. Sec. 4, Ch. 127, L. 1979; amd. Sec. 2, Ch. 410, L. 1979; amd. Sec. 1, Ch. 449, L. 1983; amd. Sec. 2, Ch. 509, L. 1987; amd. Sec. 2, Ch. 303, L. 1989; amd. Sec. 2, Ch. 405, L. 1989; amd. Sec. 9, Ch. 350, L. 1995; amd. Sec. 3, Ch. 467, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 350 in (8)(c)(ix), at beginning, substituted "partner or family member assault" for "domestic abuse"; and made minor changes in style.

Chapter 467 in seven places substituted "other parent" for "convicted parent"; in (8)(a), near beginning after "parent", inserted "or other person residing in that parent's household"; inserted (8)(c)(v) concerning deviate sexual conduct with an animal; and made minor changes in style. Amendment effective April 15, 1995.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Costs — attorney's fees, 40-4-110.

Child custody jurisdiction — commencement of proceedings, 40-4-211.

Modification of custody decree of another state, 40-7-115.

Custodial interference, 45-5-304.

Endangering the welfare of children, 45-5-622.

40-4-220. Affidavit practice. (1) A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order.

History: En. 48-340 by Sec. 40, Ch. 536, L. 1975; R.C.M. 1947, 48-340; amd. Sec. 3, Ch. 410, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Information under oath to be submitted to the court, 40-7-110.

40-4-221. Determination of custody upon death of custodial parent. (1) Upon the death of a parent granted custody of a child, custody shall pass to the noncustodial parent unless one or more parties named in subsection

(2) request a custody hearing. The noncustodial parent shall be a party in any proceeding brought under this section.

(2) Upon the death of a parent granted custody of a child, any of the following parties may request a custody hearing and seek custody of the child:

(a) the noncustodial natural parent;

(b) the surviving spouse of the deceased custodial parent;

(c) a person nominated by the will of the deceased custodial parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of custody shall be governed by this part.

History: En. Secs. 1, 2, 3, Ch. 127, L. 1979.

Cross-References

Permissive intervention, Rule 24(b), M.R.Civ.P. (see Title 25, ch. 20).

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

40-4-222. Declaration of legislative intent — joint custody. The legislature of the state of Montana finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The legislature believes that the district courts of the state of Montana have the authority to award joint custody if the court finds joint custody in the best interests of the children in the case then before the court. The intent of 40-4-222 through 40-4-225 is to establish certain guidelines for resolution of custody disputes.

History: En. Sec. 1, Ch. 416, L. 1981.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

40-4-223. Award of joint or separate custody. (1) In custody disputes involving both parents of a minor child, the court shall award custody according to the best interests of the child as set out in 40-4-212:

(a) to both parents jointly; the court shall inquire whether a joint custody agreement was made knowingly and voluntarily; or

(b) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex.

(2) In making an award, the court shall require the submission of a plan for the implementation of the custody order.

(3) In making an award, the court shall state in its decision the reasons and factors considered in making the award.

History: En. Sec. 2, Ch. 416, L. 1981; amd. Sec. 2, Ch. 727, L. 1985.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

Preservation of documents for use in other states, 40-7-122.

40-4-224. Joint custody — modification — consultation with professionals. (1) Upon application of either parent or both parents for joint custody, the court shall presume joint custody is in the best interest of a minor child unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interest of the minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody. Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interest of a child, nor is a finding that the parents are hostile to each other. However, a finding that one parent physically abused the other parent or the child is a sufficient basis for finding that joint custody is not in the best interest of the child.

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the physical custody and residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing contact with both parents. The allotment of time between the parents must be as equal as possible; however:

(a) each case shall be determined according to its own practicalities, with the best interest of the child as the primary consideration; and

(b) when allotting time between the parents, the court shall consider the effect of the time allotment on the stability and continuity of the child's education.

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody.

History: En. Sec. 3, Ch. 416, L. 1981; amd. Sec. 1, Ch. 496, L. 1985; amd. Sec. 3, Ch. 727, L. 1985; amd. Sec. 2, Ch. 379, L. 1987; amd. Sec. 1, Ch. 365, L. 1989.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

Obligations of parents for education of child, 40-6-211.

When custody may be awarded without dissolution proceedings, 40-6-224.

Preservation of documents for use in other states, 40-7-122.

40-4-225. Access to records by noncustodial parent. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent because such parent is not the child's custodial parent.

History: En. Sec. 4, Ch. 416, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right to privacy, Art. II, sec. 10, Mont. Const.

Immunization record, 20-5-406.

40-4-226. Court-ordered educational program on effects of dissolution of marriage on children. (1) In a proceeding for dissolution of marriage involving a minor child or in a custody modification proceeding involving a minor child, a court shall inform the parties, excluding the minor child, of available educational programs concerning the effects of dissolution of marriage on children and, if the court finds that it would be in the best interest of the minor child, may order the parties to attend a program. The program may be divided into sessions. The program must be educational in nature and may not be designed for individual therapy.

(2) Any facts presented at an educational session resulting from a referral under this section may not be considered in a dissolution of a marriage or a custody modification proceeding, nor may a report resulting from an educational session become part of the record of the dissolution or proceeding unless the parties have stipulated in writing to the contrary.

(3) The fees or costs of an educational session under this section must be borne by the parties and may be assessed by the court in an equitable manner.

History: En. Sec. 1, Ch. 201, L. 1995.

Part 3

Family Law Mediation

40-4-301. Family law mediation — exception. (1) The district court may at any time consider the advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case. Any party may request the court to order mediation. If the parties agree to mediation, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the mediation sessions.

(2) The court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party.

(3) The court shall appoint a mediator from the list maintained pursuant to 40-4-306. By agreement of all parties, mediators not on the list may be appointed.

(4) The court may adopt rules to implement this part.

History: En. Sec. 1, Ch. 199, L. 1993.

40-4-302. Mediation proceeding — tolling of statute of limitations. (1) The purpose of a mediation proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the child custody, child support, visitation, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to 40-4-301(1), the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement.

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in writing to participate in the mediation or when the court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator.

History: En. Sec. 2, Ch. 199, L. 1993.

40-4-303. Proceedings — records — confidentiality. Mediation proceedings must be conducted in private. All records of a mediation proceeding are confidential and may not be used in evidence in an action enumerated in 40-4-301. Matters subject to the mediation proceeding are confidential. A mediator or a party to the mediation is not subject to compelled disclosure of any part of the mediation proceeding.

History: En. Sec. 3, Ch. 199, L. 1993.

40-4-304. Mediator recommendation. The mediator may, upon stipulation by the parties, recommend temporary orders to the court prior to the final decree.

History: En. Sec. 4, Ch. 199, L. 1993.

40-4-305. Mediation agreement. An agreement reached by the parties as a result of mediation must be discussed by the parties with their attorneys, if any, and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement.

History: En. Sec. 5, Ch. 199, L. 1993.

40-4-306. Mediator list. The district court shall establish and maintain a list of mediators available to assist parties in formally mediating disputes as provided in 40-4-301 and 40-4-302. The list of mediators must be maintained by the clerk of court. The clerk of court may accept the applications of individuals who meet the qualifications required under 40-4-307 and who seek placement on the mediator list. The applications must be presented to the court for review and approval. A mediator may be a member of the staff or contracted staff of a district court, probation department, mental health services agency, or private mediation service.

History: En. Sec. 6, Ch. 199, L. 1993.

40-4-307. Mediator qualifications. A mediator shall meet the following minimum qualifications:

(1) knowledge of the court system and the procedures used in family law matters;

(2) knowledge of other resources in the community to which the parties may be referred for assistance;

(3) if applicable, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and child custody research; and

(4) knowledge of the mediation process.

History: En. Sec. 7, Ch. 199, L. 1993.

40-4-308. Court to establish fees. A court may establish a fee schedule for the costs of administering this part. The fees must be paid by the parties to the mediation proceeding.

History: **En. Sec. 8, Ch. 199, L. 1993.**

CHAPTER 5

ENFORCEMENT OF SUPPORT

Part 1 — Uniform Interstate Family Support Act

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Part 1
Uniform Interstate Family Support Act

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Duties of husband and wife as to support, 40-2-102.

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Registration and enforcement of interstate income withholding orders, 40-5-431 through 40-5-434.

40-5-101. Short title. This part may be cited as the "Uniform Interstate Family Support Act".

History: En. Sec. 42, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-82; amd. Sec. 1, Ch. 328, L. 1993.

40-5-102. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 1, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-41.

40-5-103. Definitions. (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.

(8) "Initiating state" means a state in which a proceeding pursuant to this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a proceeding initiated by the department of public health and human services under 40-5-263 is filed for forwarding to a responding state.

(9) "Initiating tribunal" means the authorized tribunal in an initiating state.

(10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(13) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or

(c) an individual seeking a judgment determining parentage of that individual's child.

(14) "Obligor" means an individual or the estate of a decedent:

(a) who owes or is alleged to owe a duty of support;

(b) who is alleged but has not been adjudicated to be a parent of a child; or

(c) who is liable under a support order.

(15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(16) "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding state" means a state to which a proceeding is forwarded under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a proceeding initiated by the department of public health and human services under 40-5-263.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part.

(22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) a determination of parentage; or

(iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

(i) in cases brought under title IV-D of the Social Security Act, the department of public health and human services; and

(ii) in all other cases, the prosecuting attorney.

(23) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, that:

(a) is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision;

(b) provides for monetary support, health care, arrearages, or reimbursement; and

(c) may include related costs and fees, interest, income withholding, attorney fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

History: En. Sec. 2, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-42; amd. Sec. 2, Ch. 328, L. 1993; amd. Sec. 124, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definitions of initiating state, responding state, and support enforcement agency substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

40-5-104. Renumbered 40-5-144 by Code Commissioner, 1993.

40-5-105. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 4, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-44.

40-5-106. Renumbered 40-5-153 by Code Commissioner, 1993.

40-5-107. Renumbered 40-5-154 by Code Commissioner, 1993.

40-5-108 through 40-5-114. Repealed. Sec. 58, Ch. 328, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

40-5-108. En. Sec. 7, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-47.

40-5-109. En. Sec. 8, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-48.

40-5-110. En. Sec. 9, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-49.

40-5-111. En. Sec. 10, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-50.

40-5-112. En. Sec. 11, Ch. 237, L. 1969; amd. Sec. 6, Ch. 379, L. 1977; R.C.M. 1947, 93-2601-51; amd. Sec. 3, Ch. 33, L. 1979; amd. Sec. 27, Ch. 609, L. 1987.

40-5-113. En. Sec. 12, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-52; amd. Sec. 1, Ch. 189, L. 1981; amd. Sec. 28, Ch. 609, L. 1987; amd. Sec. 21, Ch. 702, L. 1989.

40-5-114. En. Sec. 13, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-53.

40-5-115. Renumbered 40-5-161 by Code Commissioner, 1993.

40-5-116. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 15, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-55.

40-5-117. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 16, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-56.

40-5-118. Renumbered 40-5-165 by Code Commissioner, 1993.

40-5-119. Renumbered 40-5-166 by Code Commissioner, 1993.

40-5-120 through 40-5-132. Repealed. Sec. 58, Ch. 328, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

40-5-120. En. Sec. 19, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-59.

40-5-121. En. Sec. 20, Ch. 237, L. 1969; amd. Sec. 24, Ch. 33, L. 1977; R.C.M. 1947, 93-2601-60.

40-5-122. En. Sec. 21, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-61.

40-5-123. En. Sec. 22, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-62.

40-5-124. En. Sec. 23, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-63.

40-5-125. En. Sec. 24, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-64; amd. Sec. 2, Ch. 532, L. 1985.

40-5-126. En. Sec. 25, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-65.

40-5-127. En. Sec. 26, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-66.

40-5-128. En. Sec. 27, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-67.

40-5-129. En. Sec. 28, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-68.

40-5-130. En. Sec. 29, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-69.

40-5-131. En. Sec. 30, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-70; amd. Sec. 4, Ch. 33, L. 1979.

40-5-132. En. Sec. 31, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-71.

40-5-133. Renumbered 40-5-183 by Code Commissioner, 1993.

40-5-134. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 33, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-73.

40-5-135. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 34, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-74.

40-5-136. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 35, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-75.

40-5-137. Renumbered 40-5-184 by Code Commissioner, 1993.

40-5-138. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 37, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-77.

40-5-139. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 38, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-78; amd. Sec. 29, Ch. 609, L. 1987.

40-5-140. Renumbered 40-5-185 by Code Commissioner, 1993.

40-5-141. Renumbered 40-5-186 by Code Commissioner, 1993.

40-5-142. Renumbered 40-5-197 by Code Commissioner, 1993.

40-5-143. Tribunals of this state. The district courts and the department of public health and human services are the tribunals of this state.

History: En. Sec. 3, Ch. 328, L. 1993; amd. Sec. 125, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

40-5-144. Remedies cumulative. Remedies provided in this part are cumulative and do not affect the availability of remedies under other law.

History: En. Sec. 3, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-43; amd. Sec. 4, Ch. 328, L. 1993; Sec. 40-5-104, MCA 1991; redes. 40-5-144 by Code Commissioner, 1993.

Cross-References

What acts or omissions are contempts, 3-1-501.

Warnings of withholding procedures, 40-4-204.

Payment of maintenance or support to court, 40-4-206.

Assignments, 40-4-207.

Security or guaranty to secure support. 40-4-209.

Remedy when parent dies without providing for support, 40-6-213.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-5-145. Bases for jurisdiction over nonresident. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(7) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

History: En. Sec. 5, Ch. 328, L. 1993.

40-5-146. Procedure when exercising jurisdiction over nonresident. A tribunal of this state exercising personal jurisdiction over a nonresident pursuant to 40-5-145 may apply 40-5-175 to receive evidence from another state and 40-5-177 to obtain discovery through a tribunal of another state. In all other respects, 40-5-158 through 40-5-166, 40-5-170 through 40-5-180, and 40-5-183 through 40-5-186 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this part.

History: En. Sec. 6, Ch. 328, L. 1993.

40-5-147. Initiating and responding tribunal of this state. Under this part, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

History: En. Sec. 7, Ch. 328, L. 1993.

40-5-148. Simultaneous proceedings in another state. (1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(a) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(b) the contesting party timely challenges the exercise of jurisdiction in the other state; and

(c) if relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(a) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) the contesting party timely challenges the exercise of jurisdiction in this state; and

(c) if relevant, the other state is the home state of the child.

History: En. Sec. 8, Ch. 328, L. 1993.

40-5-149. Continuing, exclusive jurisdiction. (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(a) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this part.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this part, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

(a) enforce the order that was modified as to amounts accruing before the modification;

(b) enforce nonmodifiable aspects of that order; and

(c) provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

(4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to a law substantially similar to this part.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

History: En. Sec. 9, Ch. 328, L. 1993.

40-5-150. Enforcement and modification of support order by tribunal having continuing jurisdiction. (1) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(2) A tribunal of this state that has continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order of another state. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply 40-5-175 to receive evidence from another state and 40-5-177 to obtain discovery through a tribunal of another state.

(3) A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

History: En. Sec. 10, Ch. 328, L. 1993.

40-5-151. Recognition of child support orders. (1) If a proceeding is brought under this part and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(a) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

(b) If two or more tribunals have issued child support orders for the same obligor and child and only one of the tribunals would have continuing, exclusive jurisdiction under this part, the order of that tribunal must be recognized.

(c) If two or more tribunals have issued child support orders for the same obligor and child and more than one of the tribunals would have continuing, exclusive jurisdiction under this part, an order issued by a tribunal in the current home state of the child must be recognized. However, if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

(d) If two or more tribunals have issued child support orders for the same obligor and child and none of the tribunals would have continuing, exclusive jurisdiction under this part, the tribunal of this state may issue a child support order, which must be recognized.

(2) The tribunal that has issued an order recognized under subsection (1) is the tribunal having continuing, exclusive jurisdiction.

History: En. Sec. 11, Ch. 328, L. 1993.

40-5-152. Multiple child support orders for two or more obligees. In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which orders was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

History: En. Sec. 12, Ch. 328, L. 1993.

40-5-153. Grounds for rendition. (1) The governor of this state may:

(a) demand of the governor of another state the surrender of an individual found in the other state who is charged criminally in this state with failing to provide for the support of an obligee; or

(b) on demand by the governor of another state, surrender an individual found in this state who is charged criminally in that state with failing to provide for the support of an obligee.

(2) A provision for extradition of individuals that is not inconsistent with this part applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from the demanding state.

History: En. Sec. 5, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-45; amd. Sec. 13, Ch. 328, L. 1993; Sec. 40-5-106, MCA 1991; redes. 40-5-153 by Code Commissioner, 1993.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Nonsupport, 45-5-621.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-154. Conditions of rendition. (1) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require any prosecuting attorney of this state to demonstrate:

(a) that at least 60 days previously, the obligee had initiated proceedings for support pursuant to this part; or

(b) that the proceeding would be of no avail.

(2) If, under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require a prosecuting attorney to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor of this state may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor of this state may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor of this state may decline to honor the demand if the individual is complying with the support order.

History: En. Sec. 6, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-46; amd. Sec. 14, Ch. 328, L. 1993; Sec. 40-5-107, MCA 1991; redes. 40-5-154 by Code Commissioner, 1993.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Nonsupport, 45-5-621.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-155 through 40-5-157 reserved.

40-5-158. Proceedings under this part. (1) Except as otherwise provided in this part, 40-5-158 through 40-5-166, 40-5-170 through 40-5-178, 40-5-180, and 40-5-183 apply to all proceedings under this part.

(2) This part provides for the following proceedings:

(a) establishment of an order for spousal support or child support pursuant to 40-5-179;

(b) enforcement of a support order and income-withholding order of another state without registration;

(c) registration of an order for spousal support or child support of another state for enforcement pursuant to 40-5-184 through 40-5-195;

(d) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to 40-5-147 through 40-5-150;

(e) registration of an order for child support of another state for modification pursuant to 40-5-184 through 40-5-195;

(f) determination of parentage pursuant to 40-5-196; and

(g) assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.

(3) If the tribunal is the department of public health and human services, this part includes the administrative remedies under this chapter.

(4) An individual or a support enforcement agency may commence a proceeding authorized under this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent.

History: En. Sec. 15, Ch. 328, L. 1993; amd. Sec. 126, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (3) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

40-5-159. Action by a minor parent. A minor parent or the guardian or other legal representative of a minor parent may maintain a proceeding on behalf of or for the benefit of the minor's child.

History: En. Sec. 16, Ch. 328, L. 1993.

40-5-160. Application of law of this state. Except as otherwise provided by this part, a responding tribunal of this state:

(1) shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

History: En. Sec. 17, Ch. 328, L. 1993.

40-5-161. Duties of initiating tribunal. (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) The department of public health and human services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5. In all other cases, the district court is the initiating tribunal.

History: En. Sec. 14, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-54; amd. Sec. 18, Ch. 328, L. 1993; Sec. 40-5-115, MCA 1991; redes. 40-5-161 by Code Commissioner, 1993; amd. Sec. 127, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-162. Duties and powers of responding tribunal. (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158(4), it shall cause the petition or pleading to be filed and notify the petitioner by first-class mail where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by use of civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

(6) The department of public health and human services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal.

History: En. Sec. 19, Ch. 328, L. 1993; amd. Sec. 128, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (6) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

40-5-163. Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by first-class mail where and when the pleading was sent.

History: En. Sec. 20, Ch. 328, L. 1993.

40-5-164. Duties of support enforcement agency. (1) A support enforcement agency of this state, upon application, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly send a copy of the notice by first-class mail to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication by first-class mail to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of public health and human services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 5. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency.

History: En. Sec. 21, Ch. 328, L. 1993; amd. Sec. 129, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (4) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

40-5-165. Duties of state information agency. (1) The department of public health and human services is designated as the state information agency under this part.

(2) The department shall:

(a) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this part and of any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) maintain a register of tribunals and support enforcement agencies of other states;

(c) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(d) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

History: En. Sec. 17, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-57; amd. Sec. 22, Ch. 328, L. 1993; Sec. 40-5-118, MCA 1991; redes. 40-5-165 by Code Commissioner, 1993; amd. Sec. 130, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

40-5-166. Duty of attorney general. If the attorney general determines that a support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this part or may provide those services directly to the individual.

History: En. Sec. 18, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-58; amd. Sec. 23, Ch. 328, L. 1993; Sec. 40-5-119, MCA 1991; redes. 40-5-166 by Code Commissioner, 1993.

Cross-References

Attorney General — general duties, 2-15-501.

Docket, 3-5-508.

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-167 through 40-5-169 reserved.

40-5-170. Private counsel. An individual may employ private counsel to represent the individual in proceedings authorized by this part.

History: En. Sec. 24, Ch. 328, L. 1993.

40-5-171. Pleadings and accompanying documents. (1) A petitioner who seeks to establish or modify a support order or to determine parentage in a proceeding under this part shall verify the petition. Unless otherwise ordered under 40-5-172, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

History: En. Sec. 25, Ch. 328, L. 1993.

40-5-172. Nondisclosure of information in exceptional circumstances. Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this part.

History: En. Sec. 26, Ch. 328, L. 1993.

40-5-173. Costs and fees. (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under 40-5-184 through 40-5-195 or 40-5-271, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

(4) The standardized schedule of fees established by the department of public health and human services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2).

History: En. Sec. 27, Ch. 328, L. 1993; amd. Sec. 131, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (4) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

40-5-174. Nonparentage as defense — limitation. A party whose parentage of a child has been previously determined pursuant to law may not plead nonparentage as a defense to a proceeding under this part.

History: En. Sec. 28, Ch. 328, L. 1993.

40-5-175. Special rules of evidence and procedure. (1) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or for the rendition of a judgment determining parentage.

(2) A verified petition, affidavit, or document substantially complying with federally mandated forms and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this part, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this part.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this part.

History: En. Sec. 29, Ch. 328, L. 1993.

40-5-176. Communications between tribunals. A tribunal of this state may communicate, in writing or by telephone or other means, with a tribunal of another state to obtain information concerning the laws of that state; the legal effect of a judgment, decree, or order of that tribunal; and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

History: En. Sec. 30, Ch. 328, L. 1993.

40-5-177. Assistance with discovery. A tribunal of this state may:

(1) request a tribunal of another state to assist in obtaining discovery; and

(2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

History: **En. Sec. 31, Ch. 328, L. 1993.**

40-5-178. Receipt and disbursement of payments. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order as directed under this part. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

History: **En. Sec. 32, Ch. 328, L. 1993.**

40-5-179. Petition to establish support order. (1) If a support order entitled to recognition under this part has not been issued, an appropriate responding tribunal of this state may issue a support order if:

(a) the individual seeking the order resides in another state; or

(b) the support enforcement agency seeking the order is located in another state.

(2) The tribunal may issue a temporary child support order if:

(a) the respondent has signed a verified statement acknowledging parentage;

(b) the respondent has been determined by or pursuant to law to be the parent; or

(c) there is other clear and convincing evidence that the respondent is the child's parent.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to 40-5-162.

History: **En. Sec. 33, Ch. 328, L. 1993.**

40-5-180. Administrative enforcement of orders. (1) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this part.

History: **En. Sec. 34, Ch. 328, L. 1993.**

40-5-181. Credit for payments. An amount collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amount accruing or accrued for the same period under a support order issued for the same obligation by a tribunal of this state.

History: **En. Sec. 15, Ch. 60, L. 1995.**

40-5-182 reserved.

40-5-183. Limited immunity of petitioner. (1) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by a support enforcement agency, does not confer jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this part.

(3) The immunity granted by this section does not extend to civil litigation based on acts that are unrelated to a proceeding under this part and that are committed by a party while present in this state to participate in the proceeding.

History: En. Sec. 32, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-72; amd. Sec. 35, Ch. 328, L. 1993; Sec. 40-5-133, MCA 1991; redes. 40-5-183 by Code Commissioner, 1993.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

40-5-184. Registration of order for enforcement. A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

History: En. Sec. 36, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-76; amd. Sec. 36, Ch. 328, L. 1993; Sec. 40-5-137, MCA 1991; redes. 40-5-184 by Code Commissioner, 1993.

Cross-References

Register of actions, 3-5-504.

40-5-185. Procedure to register order for enforcement. (1) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the department of public health and human services pursuant to 40-5-263 or to the district court:

(a) a letter of transmittal to the tribunal to request registration and enforcement;

(b) two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(c) a sworn statement by the party seeking registration or a certified statement by the custodian of the records, showing the amount of any arrearages;

(d) the name of the obligor and, if known:

(i) the obligor's address and social security number;

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state that is not exempt from execution; and

(e) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed, together with one copy of the documents and information, regardless of their form.

(3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed either at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

History: En. Sec. 39, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-79; amd. Sec. 37, Ch. 328, L. 1993; Sec. 40-5-140, MCA 1991; redes. 40-5-185 by Code Commissioner, 1993; amd. Sec. 132, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Register of actions, 3-5-504.

Docket, 3-5-508.

Fees of the Clerk of the District Court, 25-1-201.

40-5-186. Effect of registration enforcement. (1) A support order or income-withholding order issued in another state is registered when the order is filed in a registering tribunal of this state.

(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in 40-5-184 through 40-5-195, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

History: En. Sec. 40, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-80; amd. Sec. 38, Ch. 328, L. 1993; Sec. 40-5-141, MCA 1991; redes. 40-5-186 by Code Commissioner, 1993.

Cross-References

Register of actions, 3-5-504.

Effect of judicial record of another state, 26-3-203.

Effect of foreign judgment, 26-3-205.

40-5-187. Choice of law. (1) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(2) In a proceeding for arrearages, the statute of limitations under the laws of this state or of the issuing state, whichever is longer, applies.

History: En. Sec. 39, Ch. 328, L. 1993.

40-5-188. Notice of registration of order. (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class or certified mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner:

(i) will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(ii) precludes further contest of that order with respect to any matter that could have been asserted; and

(d) of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to Title 40, chapter 5, part 4.

History: En. Sec. 40, Ch. 328, L. 1993.

40-5-189. Procedure to contest validity or enforcement of registered order. (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may, pursuant to 40-5-190, seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

History: En. Sec. 41, Ch. 328, L. 1993.

40-5-190. Contest of registration or enforcement. (1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(a) the issuing tribunal lacked personal jurisdiction over the contesting party;

(b) the order was obtained by fraud;

(c) the order has been vacated, suspended, or modified by a later order;

(d) the issuing tribunal has stayed the order pending appeal;

(e) there is a defense under the law of this state to the remedy sought;

(f) full or partial payment has been made; or

(g) the statute of limitations under 40-5-187 precludes enforcement of some or all of the arrearages.

(2) If a party presents evidence establishing a full or partial defense under subsection (1), the registering tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

History: En. Sec. 42, Ch. 328, L. 1993.

40-5-191. Confirmed order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History: En. Sec. 43, Ch. 328, L. 1993.

40-5-192. Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify or to modify and enforce a child support order issued in another state shall register that order in this state in the same manner provided in 40-5-184 through 40-5-186, 40-5-188, and 40-5-271 if the order has not been registered. A petition for modification may be filed either at the same time as a request for registration or later. The pleading must specify the grounds for modification.

History: En. Sec. 44, Ch. 328, L. 1993.

40-5-193. Effect of registration for modification. A tribunal of this state may enforce a child support order of another state, registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state. However, the registered order may be modified only if the requirements of 40-5-194 have been met.

History: En. Sec. 45, Ch. 328, L. 1993.

40-5-194. Modification of child support order of another state. (1) After a child support order issued in another state has been registered in this state, the appropriate responding tribunal of this state may modify that order only if, after notice and hearing, it finds that:

(a) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) an individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed in the issuing tribunal a written consent providing that the appropriate tribunal of this state may modify the support order and that this state may assume continuing, exclusive jurisdiction over the order.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may modify only a child support order. A tribunal may not modify provisions, such as custody, visitation, or other provisions not related to support.

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state has continuing, exclusive jurisdiction.

(5) Within 30 days after issuance of a modified child support order, the tribunal issuing the modification shall file a certified copy of the order:

(a) with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

(b) in each tribunal in which the modifying tribunal knows that earlier order has been registered.

History: En. Sec. 46, Ch. 328, L. 1993.

40-5-195. Recognition of order modified in another state. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to a law substantially similar to this part. Except as otherwise provided in this part, the tribunal of this state shall, upon request:

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of that order;

(3) provide other appropriate relief only for violations of the order that occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

History: En. Sec. 47, Ch. 328, L. 1993.

40-5-196. Proceeding to determine parentage. (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules of this state on choice of law.

(3) A proceeding to determine parentage directed to:

(a) the department of public health and human services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1.

History: En. Sec. 48, Ch. 328, L. 1993; amd. Sec. 133, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (3)(a) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

40-5-197. Uniformity of interpretation. This part must be so construed as to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 41, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-81; amd. Sec. 49, Ch. 328, L. 1993; Sec. 40-5-142, MCA 1991; redes. 40-5-197 by Code Commissioner, 1993.

40-5-198 and 40-5-199 reserved.

Part 2

Administrative Enforcement of Support

Part Cross-References

Reciprocal Agreement for Collection of Wages Act of 1977, Title 39, ch. 3, part 3.

Child Support Income Deduction Act of 1981, Title 40, ch. 5, part 3.

Child Support Enforcement Act of 1985, Title 40, ch. 5, part 4.

40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; any person under 19 years of age and still in high school; or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearing examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child, including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child; and

(b) is issued by:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated under the act.

History: En. Sec. 1, Ch. 612, L. 1979; amd. Sec. 1, Ch. 561, L. 1985; amd. Sec. 1, Ch. 119, L. 1989; amd. Sec. 1, Ch. 287, L. 1989; amd. Sec. 1, Ch. 549, L. 1989; amd. Sec. 28, Ch. 702, L. 1989; amd. Sec. 5, Ch. 266, L. 1991; amd. Sec. 8, Ch. 631, L. 1993; amd. Sec. 8, Ch. 60, L. 1995; amd. Sec. 29, Ch. 504, L. 1995; amd. Sec. 134, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 60 in definition of support order, near beginning after "means an order", substituted "whether temporary or final" for "providing a determinable amount for temporary or final periodic payment of funds for the support of a child" and inserted subsection (a) of definition concerning specific amount of money, including money for specified purposes; and made minor changes in style.

Chapter 504 in definition of support debt or support obligation, in (a), substituted "provide for the medical, health, and support needs of a child" for "provide support to a child"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definitions of Department and Director substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Maintenance, 40-4-203.
Child support, 40-4-204.

40-5-202. Department of public health and human services — powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this chapter, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral on behalf of the child from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53;

(b) is providing services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. Upon filing, the department may, on behalf of itself or on behalf of the obligee, obligor, or child,

initiate, participate in, intervene in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department and its attorneys serve the public interest in ensuring that children are supported by their parents, rather than maintained by public assistance. The department does not represent the interests of any individual person, and its attorneys represent only the department. An attorney-client relationship is not created between department attorneys and any person or entity other than the department. The obligee, obligor, and child may obtain the services of a private attorney to represent their interests. The existence or appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the department's right to act or provide services under this chapter. This chapter does not require the department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or child.

(4) The department has the power of attorney to act in the name of any obligee to endorse and cash any drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(5) (a) If the department is providing IV-D services, the department must be afforded notice and an opportunity to participate as an independent party in any proceeding relating to paternity, to termination of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child.

(b) The notice must reasonably inform the department of the issues to be determined in the proceeding, the names of the parties and the child, and the identity and location of the tribunal in which the issues will be determined. The notice is for informational purposes only and is not intended as a substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment, decree, or order is void as to any interest of the department that is or may be affected by the agreement, judgment, decree, or order if the department was not joined as a party in the manner provided in the Montana Rules of Civil Procedure.

(c) The notice must be personally served on the department. Within 20 days after service of the notice, the department may:

(i) decline to enter the proceeding as a party, in which case the proceeding may continue without the department's participation;

(ii) inform the tribunal that a substantial interest of the department could be adversely affected by the proceeding, in which case the proceeding may not continue without joining the department as a necessary party in the manner provided in the Montana Rules of Civil Procedure; or

(iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an administrative proceeding under this chapter in which the parties and some or all of the issues are the same as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the common issues until administrative remedies have been exhausted.

(6) (a) A recipient or former recipient of public assistance who assigned support rights under 53-2-613 or a collection agency acting on behalf of the recipient or former recipient may collect only that part of a delinquent support

amount that accrued after termination of public assistance. The recipient, former recipient, or collection agency may not commence or maintain an action against or make an agreement with the obligor to recover an assigned delinquent support amount unless the department, in writing:

(i) releases or relinquishes its assigned interest;

(ii) declares the support debt owed the department to be satisfied, in which case the balance of the delinquent amount is released; or

(iii) consents to the action or agreement.

(b) If a recipient, former recipient, or collection agency collects or receives value for any part of an assigned delinquent support amount and the department has not given its consent or released or relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt and full restitution to the department. If prompt and full restitution is not made, the department may send a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection agency is liable for damages equal to double the amount collected or value received. The amount of damages may be determined and assessed by the department under the contested case provisions of the Montana Administrative Procedure Act. The damages may be collected by the department by any method or remedy available for the enforcement of child support owed by an obligor parent.

(c) This subsection (6) does not limit the right of a person to recover money not assigned. If there are competing proceedings against an obligor for collection of delinquent support, the collection of support assigned to the department takes priority over the obligor's income and assets.

(7) An applicant for or recipient of services may not act to the prejudice of the department's rights while the services are being provided.

(8) Unless the department has consented to the agreement in writing, if public assistance is being or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or order adopting the agreement does not act to reduce or terminate any rights of the department to establish a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or order purports to:

(a) relieve or terminate the obligor's support duty;

(b) waive, modify, compromise, or discharge the support debt;

(c) prepay future support obligations or settle past, present, or future support obligations; or

(d) permit the obligor to pay past, present, or future support obligations:

(i) with noncash contributions;

(ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments; or

(iii) by making contributions to a trust or other account or payments toward an asset if the contributed amounts are unavailable to the department.

(9) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(10) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(11) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(12) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(13) While providing services under this chapter and in order to carry out the purposes mentioned in this chapter, the department, through its director or the director's authorized representatives, may:

(a) administer oaths;

(b) certify official acts and records;

(c) issue investigative and hearing subpoenas;

(d) order discovery before and after a hearing;

(e) hold prehearing and settlement conferences;

(f) compel the attendance of witnesses and the production of books, accounts, documents, and evidence; and

(g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint, including the examination of an obligor or other person in the manner provided for the taking of a deposition in a civil action.

(14) In addition to any other requirement for service provided by the Montana Rules of Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the department under this chapter, the notice, service, or response must be made to the department's child support enforcement division.

History: En. Sec. 2, Ch. 612, L. 1979; amd. Sec. 1, Ch. 188, L. 1981; amd. Sec. 2, Ch. 561, L. 1985; amd. Sec. 30, Ch. 609, L. 1987; amd. Sec. 2, Ch. 549, L. 1989; amd. Sec. 22, Ch. 702, L. 1989; amd. Sec. 53, Ch. 328, L. 1993; amd. Sec. 9, Ch. 631, L. 1993; amd. Sec. 1, Ch. 264, L. 1995; amd. Sec. 135, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 264 in (1) substituted "chapter" for "part"; in (1)(b), after "is providing", deleted "child support enforcement"; in (2), at beginning of second sentence, inserted "Upon filing", inserted "on behalf of itself or on behalf of the obligee, obligor, or child", and inserted "intervene in"; inserted (3) concerning representation of public interest by Department; in (5)(a), at beginning, substituted "If the department is providing IV-D services, the department" for "The department is a party to and", after "participate" inserted "as an independent party", and after "paternity" inserted "to termination of parental rights" and deleted second sentence that read: "A recipient of services may not act to prejudice the rights of the department while the services are being provided"; inserted (5)(b) and (5)(c) relating to content and service of notice; inserted (6) relating to assignment of child support; inserted (7) concerning prejudice to rights of Department; in (8) substituted introductory clause relating to consent by Department and payment of public assistance for child for "If child support enforcement services are being or have been provided under this part", after "obligor" substituted "or a judgment, decree, or order adopting the agreement does" for "either relieving an obligor of any duty of support or purporting to settle past, present, or future obligations either as settlement or prepayment may", after "department" inserted "to establish a support order or", after "recover" inserted "a support debt", after "obligor" deleted "for support debt provided unless the department has consented to the agreement in writing", and inserted final clause relating to agreement, judgment, decree, or order; inserted (8)(a) through (8)(d) relating to effect of agreement, judgment, decree, or order; in (13) inserted initial clause referring to services under this chapter and substituted "this chapter" for "this part"; in (13)(c) inserted "investigative and hearing"; inserted (13)(d) and (13)(e) relating to discovery and settlement conferences; in (13)(f) inserted "the attendance of"; inserted (13)(g) relating to proceedings concerning execution or distraint; in (14) inserted initial clause concerning requirements for service under Rules of Civil Procedure and near middle substituted "under this chapter" for "in a proceeding concerning the establishment or enforcement of child support"; and made minor changes in style. Amendment effective March 28, 1995.

Chapter 546 in (1)(a) substituted "receives a referral on behalf of the child from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53" for "receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child"; and in (14) inserted introductory clause and after "written response to the department" substituted "under this chapter" for "in a proceeding concerning the establishment or enforcement of child support". Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Officers who may administer oaths, 1-6-101.

Issuance of subpoena, 26-2-102.

Modification of support, 40-4-208.

Obligations of parents, Title 40, ch. 6, part 2.

How evidence of abandonment established, 41-5-503.

Endangering the welfare of children, 45-5-622.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-203. Child support enforcement services. (1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule the terms and conditions by which services are provided under this section.

(3) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department may continue to provide services after public assistance is no longer being paid, without requiring an application. An obligee's acceptance of continued services constitutes the obligee's agreement to the terms and conditions set for applicants by the department under this section.

(4) The department may terminate services under this section if it:

(a) receives a written request from the obligee for termination of services;

(b) receives notice that the child is receiving public assistance; or

(c) determines that an obligee has violated any term or condition set by the department for an applicant under this section.

History: En. Sec. 3, Ch. 612, L. 1979; amd. Sec. 1, Ch. 672, L. 1985; amd. Sec. 3, Ch. 549, L. 1989; amd. Sec. 15, Ch. 702, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Standardized fee schedule, 40-5-210.

Income withholding, 40-5-411.

40-5-204. Cooperation by obligee. An obligee shall cooperate with the department in:

(1) identifying and locating the obligor;

(2) establishing the paternity of a child;

(3) obtaining support or any other payments due the obligee and child; and

(4) obtaining reimbursement for previously paid public assistance, if any.

History: En. Sec. 4, Ch. 612, L. 1979; amd. Sec. 4, Ch. 549, L. 1989.

Cross-References

How parent and child relationship established, 40-6-104.

40-5-205. Payment of support money collected to department — notice. If the department gives written notice to the obligor, to the clerk of the court, or to an administrative agency that issued a support order, that the child for whom a support order exists is receiving services from the department, then any support money must be paid to the department.

History: En. Sec. 5, Ch. 612, L. 1979; amd. Sec. 5, Ch. 549, L. 1989.

Cross-References

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee, including:

(a) name;

(b) residential and mailing addresses;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) address, location, and description of any real property; and

(i) any other asset in which the obligor or obligee may have an interest, including the extent, nature, and value of the interest.

(3) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly. The department may release information obtained from nonconfidential public and private sources, including information regarding support orders, judgments, and payment records.

(4) Use or disclosure of information obtained by the department from confidential sources of and information maintained by the department in its

records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys and courts having jurisdiction in support and abandonment proceedings and agencies in other states engaged in the enforcement of support of minor children under the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

History: En. Sec. 10, Ch. 612, L. 1979; amd. Sec. 3, Ch. 543, L. 1985; amd. Sec. 4, Ch. 418, L. 1989; amd. Sec. 6, Ch. 549, L. 1989; amd. Sec. 10, Ch. 631, L. 1993; amd. Sec. 2, Ch. 264, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 264 in (2), near end of introductory clause, inserted "or obligee"; in (2)(b) substituted "residential and mailing addresses" for "address of obligor's residence"; in (2)(h) inserted "location, and description" and after "real property" deleted "owned by the obligor"; in (2)(i) inserted "or obligee"; in (3) inserted second sentence authorizing Department to release information; in (4)(b), after "abandonment proceedings", deleted "or actions" and after "minor children" deleted "as authorized by the rules of the department and by the provisions of"; and made minor changes in style. Amendment effective March 28, 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

40-5-207. Department authorized to enforce maintenance awards. If a judgment or order creating a child support obligation also contains a judgment or order for the support of a spouse or former spouse who is the custodial parent of the child, the department may collect and enforce spousal support under this part.

History: En. Sec. 4, Ch. 561, L. 1985; amd. Sec. 7, Ch. 549, L. 1989.

Cross-References

Duties of husband and wife as to support, 40-2-102.

Liability of married person when abandoned by spouse, 40-2-104.

Maintenance, 40-4-203.

Child support, 40-4-204.

40-5-208. Medical support — obligation enforcement. (1) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the support order must include a medical support order as defined in 40-5-804.

(2) If the department is providing IV-D services for a child, the department shall also enforce any order issued by a court or administrative agency of competent jurisdiction that:

(a) requires the obligor to make payments for the health or medical needs of the child, whether expressed in monthly dollar amounts or in a lump-sum dollar amount. The department shall apply the same enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

(b) requires the obligor to enroll a child in a health benefit plan or individual insurance as defined in 40-5-804. The department may take action to enforce the order under the provisions of part 8 or may impose any other appropriate remedy.

(3) (a) To permit the department to determine whether enforcement action is necessary, if the obligor is required to enroll the child in a health benefit plan or individual insurance, upon written request by the department, the obligor shall provide the name of the individual insurance carrier or health

benefit plan, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(b) Failure of the obligor to provide the requisite information to the department may be punished as a contempt under 40-5-226.

(4) If the department is providing services for a child and a child support order or modification of a child support order does not include a medical support order as defined in 40-5-804 or fails to include any other provision for the health and medical needs of the child:

(a) upon notice to the obligor, the obligor shall enroll the child in a health or medical insurance plan available to the obligor through an employer or other group for which the premium is partially or entirely paid by the employer or other group; and

(b) the obligor shall continue enrollment of the child in the plan until:

(i) a medical support order is entered;

(ii) the obligor can demonstrate to the department that the cost of providing coverage is not reasonable;

(iii) the obligor's employment or membership in the group has terminated and the plan is no longer available to the obligor;

(iv) the employer or group eliminates coverage for all employees or members; or

(v) the department ceases to provide services for the child.

(c) If the obligor fails to enroll a child in a health or medical insurance plan under this subsection (4) or lets coverage lapse, the failure or lapse may be punished as a contempt under 40-5-226. A contempt may not be found if the obligor shows that the cost of providing coverage for the child is not reasonable.

History: En. Sec. 1, Ch. 130, L. 1987; amd. Sec. 8, Ch. 549, L. 1989; amd. Sec. 17, Ch. 702, L. 1989; amd. Sec. 11, Ch. 631, L. 1993; amd. Sec. 30, Ch. 504, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 504 in (1), after "existing order", substituted "the support order must include a medical support order as defined in 40-5-804" for "the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage"; in (2), after "providing", substituted "IV-D services for a child, the department shall also enforce any order issued by a court or administrative agency of competent jurisdiction that" for "child support enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation"; substituted (2), (2)(a), and (2)(b) concerning enforcement of order requiring obligor to make payments for health or medical needs of child or to enroll child in health benefit plan for former language that read: "(2) (a) If the department is providing child support enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation"; in (3)(a), at beginning, substituted "To permit the department to determine whether enforcement action is necessary, if the obligor is required to enroll the child in a health benefit plan or individual insurance" for "To ensure that health insurance coverage is available for the child" and substituted "individual insurance carrier or health benefit plan" for "insurance carrier"; inserted (3)(b) concerning failure of the obligor to provide information to the Department; deleted former (3) that read: "(3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the department and show cause why a sum of not more than $100 should not be assessed for each month health insurance coverage is not secured or maintained if the department determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage has not been obtained or maintained or that the obligor has failed to provide the information required, the department may assess against the obligor not more than $100 for each month health insurance coverage has not been obtained or maintained or for each month information has not been provided. The amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in 40-5-247 and income withholding provided for in Title 40, chapter 5, part 4"; deleted former (4) that read: "(4) The health insurance coverage must be provided under this section even though it may reduce the amount of child support obligation or reduce the obligor's ability to pay child support as required"; inserted (4) concerning the Department providing services for a child when a child support order or modification of a child support order does not include any provision for the health and medical needs of the child; deleted (5) that read: "(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid"; and made minor changes in style. Amendment effective July 1, 1995.

Coordination Instruction: Section 17, Ch. 60, L. 1995, provided: "If both [this act] and Senate Bill No. 402 [LC 365] are passed and approved and if Senate Bill No. 402 [LC 365] includes a section that amends 40-5-208, then [section 9 of this act], amending 40-5-208, is void." Senate Bill No. 402, including a section amending 40-5-208, was passed and approved; therefore, the amendments to this section that were adopted in sec. 9, Ch. 60, L. 1995, are void.

Cross-References

Obligations of parents for the support of their children, 40-6-211.

40-5-209. Child support guidelines — periodic review. (1) The department shall adopt uniform child support guidelines to be used to determine minimum child support amounts. In addition to giving notice and publicizing the rules as provided in the Montana Administrative Procedure Act, the department shall give notice to the supreme court, the district courts, and the state bar of Montana prior to adopting the guidelines.

(2) The guidelines must consider the factors set forth in 40-4-204(2) and 40-6-116(5).

(3) At least once every 4 years, the department shall:

(a) review the uniform child support guidelines employed to determine child support obligations to ensure that their application results in the determination of appropriate child support award amounts; and

(b) propose any appropriate modification to the legislature.

History: En. Sec. 3, Ch. 702, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-210. Standardized fee schedule — rules. (1) The department may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

(a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for paternity blood testing may be recovered from the parent, whether the alleged father or the mother, denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed the actual costs of the paternity blood tests.

(3) The department may charge a handling fee for each payment of support collected on behalf of any obligee who is not a recipient of public assistance. The department may withhold the fee from the support payment before distribution to the obligee.

(4) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee.

(5) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order whenever the department:

(i) is a prevailing party in the action; or

(ii) is not a party but incurs expenses and costs related to the action.

(6) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages; or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.

(7) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(8) The department may adopt rules necessary to implement fee schedules under this section.

(9) The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforce-

ment division special revenue fund and must be accompanied by a detailed statement of the amounts collected.

History: En. Sec. 16, Ch. 702, L. 1989; amd. Sec. 2, Ch. 294, L. 1993; amd. Sec. 12, Ch. 631, L. 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-211. Petition for support order by married parent with minor children receiving public assistance. (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance in the absence of a support order may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the department may file a petition on behalf of the parent. If satisfied that a just cause exists, the court shall direct that a citation be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

History: En. Sec. 6, Ch. 612, L. 1979.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Adoption of children, Title 40, ch. 8, part 1.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court. (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

History: En. Sec. 7, Ch. 612, L. 1979.

Cross-References

Contempts, Title 3, ch. 1 part 5.

Subpoenas, Title 26, ch. 2, part 1.

Duties of witnesses, Title 26, ch. 2, part 3.

Child support, 40-4-204.

40-5-213. Financial statements by obligor — penalty. (1) If the department is providing child support enforcement services under this part and has reasonable cause to believe that a support obligation is owed, an obligor, upon written request, shall complete a statement, under oath, stating the obligor's:

(a) current monthly income;

(b) total income over the past 36 months;

(c) the number of dependents for whom the obligor is providing support;

(d) the amount the obligor is contributing toward the support of a child for whom the department is providing services;

(e) current monthly living expenses; and

(f) all other information pertinent to the obligor's financial condition.

(2) The department may require additional financial statements from the obligor during the period the department is providing services to the child.

(3) Failure to comply with this section is a misdemeanor.

History: En. Sec. 8, Ch. 612, L. 1979; amd. Sec. 9, Ch. 549, L. 1989.

Cross-References

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

40-5-214. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part. The scale must be based on the uniform child support guidelines adopted by the department under 40-5-209.

(2) Copies of the scale must be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the scale.

History: En. Sec. 9, Ch. 612, L. 1979; amd. Sec. 4, Ch. 702, L. 1989.

Cross-References

Child support, 40-4-204.

Judgment or order concerning parentage, 40-6-116.

40-5-215 through 40-5-220 reserved.

40-5-221. Debt to state by obligor — limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of a child creates a debt due and owing the state of Montana by the obligor in an amount equal to the amount of public assistance money paid. In the case of an obligor who is an adoptive parent, a debt for public assistance paid may not accrue prior to the date of adoption.

(2) If a support order has been entered, the support debt created by this section may not exceed the amount of the order.

(3) If a child has been placed in foster care and a written agreement for payment of support exists between the obligor and any state agency, the support debt is limited to the amount provided for in the agreement. However, if a support order is or has been entered, the provisions of the order prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in the agreements or modifications of the agreements based on changed circumstances.

(5) The department may establish and collect a debt created under this section in a proceeding that is in addition to and independent of the subrogation created by 40-5-202 and the assignment under 53-2-613.

History: En. Sec. 11, Ch. 612, L. 1979; amd. Sec. 10, Ch. 549, L. 1989; amd. Sec. 4, Ch. 264, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 264 in (5), after "40-5-202", deleted "(7)"; and made minor changes in style. Amendment effective March 28, 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Modification of support, 40-4-208.

Effect of final decree of adoption, 40-8-125.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-222. Support debt based upon support order — notice — contents — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon a support order. The notice may be served upon the obligor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any support order;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt; and

(e) a statement that the obligor is entitled to a fair hearing.

(3) Action to collect the support debt by distraint and seizure and sale is lawful after 20 days from the date of service upon the obligor or 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the obligor may request a fair hearing as provided in 40-5-226.

History: En. Sec. 12, Ch. 612, L. 1979; amd. Sec. 2, Ch. 188, L. 1981; amd. Sec. 41, Ch. 439, L. 1981; amd. Sec. 11, Ch. 549, L. 1989.

Cross-References

Process — summons, Rule 4C, M.R.Civ.P. (see Title 25, ch. 20).

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of a child. The notice of liability must be served upon the obligor in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the obligee and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the obligor make answer within 20 days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before 20 days from the date of the service the support debt must be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the obligor will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before 20 days of the date of service, the support debt must be assessed and determined subject to the computation and the department may issue a warrant for distraint authorizing a collection action under this part.

(4) If the obligor, within 20 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the obligor may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing must establish the obligor's obligation, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt.

History: En. Sec. 13, Ch. 612, L. 1979; amd. Sec. 42, Ch. 439, L. 1981; amd. Sec. 12, Ch. 549, L. 1989.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect. (1) If the department reasonably believes that the obligor is not a resident of this state or is about to move from this state or has hidden, absconded, or left, or has removed or is about to remove, secrete, waste, or otherwise dispose of property that could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to 40-5-247 during the pendency of the fair hearing or after the hearing, whether or not appealed. Further action may not be taken on the warrant until final determination after fair hearing or appeal. The department shall make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The obligor may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or after the hearing, and in that case warrants issued must be released. If the decision resulting from the hearing is in favor of the obligor, all warrants issued must be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing.

History: En. Sec. 14, Ch. 612, L. 1979; amd. Sec. 43, Ch. 439, L. 1981; amd. Sec. 13, Ch. 549, L. 1989; amd. Sec. 13, Ch. 631, L. 1993.

Cross-References

Plaintiff's affidavit for obtaining writ, 27-18-202.

Defendant's undertaking to prevent levy, 27-18-301.

40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) (a) In the absence of a support order, the department may serve an obligor with a notice of financial responsibility alleging a child's need for support and the amount of the need and requiring the obligor to appear and show cause at a hearing held by the department why the obligor should not be finally ordered to pay the amount alleged in the notice.

(b) The notice must state:

(i) the names of the obligee and child;

(ii) the amount of current and future support to be paid each month for the child;

(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;

(iv) that the obligor is entitled to a fair hearing under 40-5-226.

(2) If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's monthly support responsibility must be based on the greater of:

(a) the amount of public assistance payable under Title 53, chapter 4; or

(b) the alleged need.

(3) If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.

(4) (a) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered, the department may issue to the obligor a notice of temporary support obligation.

(b) The notice must contain:

(i) the names of the child and the person or agency having the custodial care of the child;

(ii) an amount for temporary monthly support determined as provided in subsection (2);

(iii) a statement that the obligor may request a hearing at which the obligor may show that a different support amount is appropriate or that establishment of a support obligation is inappropriate under the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.

(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice or the order for a temporary support order will be entered in the amount stated in the notice; and

(v) a statement that the temporary support order will terminate upon the entry of a district court support order. If the district court order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the district court order for the same period, but excess amounts may not be refunded. If the district court determines that a periodic support obligation is not proper, any amount paid under the temporary support order must be refunded to the obligor.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice under this section if the parties subsequently separate.

(6) Any notice of financial responsibility and the notice of temporary support obligation must be served in the same manner prescribed for the service of a summons in civil action in accordance with the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 612, L. 1979; amd. Sec. 44, Ch. 439, L. 1981; amd. Sec. 14, Ch. 549, L. 1989.

Cross-References

Hearing — rules of evidence, cross-examination, judicial notice, 2-4-612.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must be scheduled within 20 days.

(3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with the determination. The order may award support from the date of:

(a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40, chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

(b) the parties' separation if support is initially established under 40-5-225; or

(c) notice to the parties of a support modification request under 40-5-273.

(4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearing officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including

cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearing officer finds by clear and convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearing officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearing officer shall state the reasons for finding that the application of the guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearing officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion of expenses already incurred that the hearing officer considers just. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

(7) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

(8) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

(9) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, each order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

(11) For the purposes of income withholding provided for in subsection (10), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current

employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information.

(12) The hearing officer may:

(a) compel obedience to the hearing officer's orders, judgments, and process and to any orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence; and

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(13) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearing officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or

(e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time that income is required to be withheld and paid to the department and the payor fails to take the required action.

(14) An affidavit of the facts constituting a contempt must be submitted to the hearing officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearing officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than $500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(15) At the time and date set for hearing, the hearing officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearing officer finds the alleged contemnor in contempt, the hearing officer may impose a penalty of not more than $500 for each count found. The hearing officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(16) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under

this section to offset the costs of administrative hearings conducted under this chapter.

(17) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected.

History: En. Sec. 16, Ch. 612, L. 1979; amd. Sec. 45, Ch. 439, L. 1981; amd. Sec. 15, Ch. 549, L. 1989; amd. Sec. 6, Ch. 266, L. 1991; amd. Sec. 3, Ch. 635, L. 1991; amd. Sec. 3, Ch. 294, L. 1993; amd. Sec. 54, Ch. 328, L. 1993; amd. Sec. 14, Ch. 631, L. 1993; amd. Sec. 5, Ch. 264, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 264 in (3), after first sentence, inserted introductory clause; inserted (3)(a) through (3)(c) providing dates from which support may be awarded; in (5), in two places before "guidelines", deleted "standards and" and inserted second to last sentence authorizing hearing officer to vary application of support guidelines; and made minor changes in style. Amendment effective March 28, 1995.

Cross-References

Rules for determining residence, 1-1-215.

Contested cases, Title 2, ch. 4, part 6.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Relief from judgment or order, Rule 60, M.R.Civ.P. (see Title 25, ch. 20).

Child support, 40-4-204.

Modification of support, 40-4-208.

40-5-227. Filing and docketing of final orders — orders effective as district court decrees. (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. The order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for a modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-247.

History: En. Sec. 1, Ch. 544, L. 1985; amd. Sec. 2, Ch. 212, L. 1987; amd. Sec. 15, Ch. 631, L. 1993.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Duties of the Clerk of District Court, Title 3, ch. 5, part 5.

Judgment, Title 25, ch. 9.

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Execution, Rule 69, M.R.Civ.P. (see Title 25, ch. 20).

40-5-228 through 40-5-230 reserved.

40-5-231. Jurisdiction and venue. (1) For purposes of an administrative action brought under this part, personal jurisdiction is established in the department over any individual or the individual's guardian or conservator if:

(a) the individual is personally served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by the act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) Personal jurisdiction over the individuals described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under this part may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located.

History: En. Sec. 2, Ch. 119, L. 1989; amd. Sec. 55, Ch. 328, L. 1993.

Cross-References

Residence — rules for determining, 1-1-215.

Paternity acknowledgment, 50-15-210.

40-5-232. Establishment of paternity — notice of paternity determination — contents. (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under 40-5-231 through 40-5-237, if a person acknowledges paternity of a child in writing and the acknowledgment is filed with the department, the department may enter an order establishing legal paternity. As a part of a voluntary acknowledgment, the department shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity. An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(4) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(5) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve the notice unless it has:

(a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(6) Service on the alleged father of the notice of paternity determination must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory paternity blood testing;

(ii) a paternity blood test may result in a presumption of paternity; and

(iii) upon receipt of the paternity blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

(7) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(8) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child.

History: En. Sec. 3, Ch. 119, L. 1989; amd. Sec. 16, Ch. 631, L. 1993; amd. Sec. 1, Ch. 70, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 70 in (3) inserted second sentence that read: "As a part of a voluntary acknowledgment, the department shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity"; inserted (4) requiring full faith and credit to be given to a determination of paternity made by another state; in (6)(f)(i), (6)(f)(ii), and (6)(f)(iii), before "blood test" or "blood testing", inserted "paternity"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Obligations of parents for the support of their children, 40-6-211.

Paternity acknowledgment, 50-15-210.

40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing. (1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.

(2) When there is reasonable cause to suggest that a blood test sample of a person submitting to a blood test was not the sample of the alleged father, mother, or child, an additional hearing may be held. The scope of the hearing is limited to questions involving the blood drawing or the chain of custody at the blood drawing site. The hearing officer may order retesting of any party.

(3) If the department does not receive a timely written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

(4) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in subsection (1), reasonable cause may be established by affidavit of the child's mother.

History: En. Sec. 4, Ch. 119, L. 1989; amd. Sec. 2, Ch. 70, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 70 inserted (2) concerning additional hearing if there is reasonable cause to suggest that a blood test sample of a person submitting to a blood test was not the sample of the alleged father, mother, or child. Amendment effective July 1, 1995.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Paternity acknowledgment, 50-15-210.

40-5-234. Paternity blood tests — use of expert's affidavit — effect of test results — records — presumption. (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity blood test required by 40-5-233.

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish the chain of custody.

(3) If the scientific evidence resulting from a paternity blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity must be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weighed in conjunction with other evidence to establish paternity.

(4) The department may enter an order of nonpaternity based on a blood test exclusion and may order the department of public health and human services to prepare an amended or substitute birth certificate.

(5) The department may enter in the support order registry established in 40-5-271 a written finding of any paternity presumption created by paternity blood test results.

(6) A presumption of paternity established under this section is a sufficient basis for establishing a support order.

History: En. Sec. 5, Ch. 119, L. 1989; amd. Sec. 3, Ch. 70, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 70 in (1) deleted second and third sentences that read: "If the issue of paternity is referred to the district court under 40-5-236, the expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to the published sources"; in (3), before "blood test", inserted "paternity"; inserted (4) allowing the Department to enter an order of nonpaternity based on a blood test exclusion and to order the Department of Health and Environmental Sciences to prepare an amended or substitute birth certificate; inserted (5) allowing the Department to enter in the support order registry established in 40-5-271 a written finding of any paternity presumption created by paternity blood test results; inserted (6) providing that a presumption of paternity established under this section is a sufficient basis for establishing a support order; and made minor changes in style. Amendment effective July 1, 1995.

Code Commissioner Change: Pursuant to sec. 2, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Family Services.

Cross-References

Affidavits, Title 26, ch. 1, part 10.
Paternity acknowledgment, 50-15-210.

40-5-235. Effect of order establishing paternity — birth records — relief from order. (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the timeframes provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7.

History: **En. Sec. 6, Ch. 119, L. 1989; amd. Sec. 78, Ch. 418, L. 1995; amd. Sec. 136, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendments: Chapter 418 in (2) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2), after "shall", deleted "file a copy of its order with the department of health and environmental sciences, which shall". Amendment effective July 1, 1995.

Cross-References

Obligations of parents, Title 40, ch. 6, part 2.

Obligations of children, Title 40, ch. 6, part 3.

Paternity acknowledgment, 50-15-210.

Distribution of estate property, Title 72.

40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees. (1) If the scientific evidence resulting from a paternity blood test does not exclude the alleged father and the alleged father continues to deny paternity, the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results. Upon receipt of the written objection, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court must be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service of the notice;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father, as provided in 40-5-231(2), that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110.

History: **En. Sec. 7, Ch. 119, L. 1989; amd. Sec. 4, Ch. 70, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 70 near beginning of first sentence of (1), before "blood test", inserted "paternity" and after "continues to deny paternity" inserted "the alleged father shall file a written objection with the department within 20 days after service of the paternity blood test results" and at beginning of second sentence inserted "Upon receipt of the written objection"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Paternity acknowledgment, 50-15-210.

40-5-237. District court paternity proceedings — objection to tests — additional tests — expert's report — admissibility of evidence. (1) In a matter referred to the district court, if an alleged father objects to the procedures for or the results of a paternity blood test, the alleged father shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test if a written objection is timely filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) If an objection to the paternity blood test is not timely filed, the paternity blood test expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional foundation testimony or other proof of authenticity and accuracy if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

(3) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(4) When a paternity blood test excludes an alleged father from possible paternity, the test is conclusive evidence of nonpaternity of the alleged father for all purposes in the district court.

History: En. Sec. 8, Ch. 119, L. 1989; amd. Sec. 5, Ch. 70, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 70 at beginning of first sentence of (1) inserted "In a matter referred to the district court" and in second sentence, before "filed", inserted "timely"; inserted (2) concerning admissibility of the blood test expert's completed and certified report of the results and conclusions of a paternity blood test; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Paternity acknowledgment, 50-15-210.

40-5-238. Confidentiality of paternity hearings and records of proceedings. Because of the privacy interests involved, a hearing under 40-5-231 through 40-5-237 and this section for the purpose of determining paternity or reasonable cause to pursue paternity blood testing is closed to the public. Attendance of others may be limited by the hearing officer as necessary to protect privacy rights. All papers and records of the proceedings, other than a final adjudication of paternity, are closed to public inspection, except that they may be opened upon consent of the parties and the hearing officer or, in exceptional cases, by order of the hearing officer.

History: En. Sec. 3, Ch. 264, L. 1995.

Compiler's Comments

Effective Date: Section 11, Ch. 264, L. 1995, provided that this section is effective on passage and approval. Approved March 28, 1995.

Cross-References

Right of public to examine documents or to observe deliberations of public bodies, Art. II, sec. 9, Mont. Const.

40-5-239 and 40-5-240 reserved.

40-5-241. Repealed. Sec. 27, Ch. 631, L. 1993.

History: En. Sec. 17, Ch. 612, L. 1979; amd. Sec. 46, Ch. 439, L. 1981; amd. Sec. 2, Ch. 544, L. 1985; amd. Sec. 16, Ch. 549, L. 1989; amd. Sec. 26, Ch. 702, L. 1989.

40-5-242. Notice of support lien — civil liability upon failure to honor support lien or to comply with warrant for distraint. (1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law.

(2) Except as provided in subsection (3), a person or entity is liable to the department in an amount equal to 100% of the value of a support lien or warrant for distraint or the value of real or personal property subject to a support lien or distrained by a warrant for distraint, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(a) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien; or

(b) fails or refuses to surrender upon demand property of an obligor when presented with a warrant for distraint by a sheriff or levying officer under the provisions of 40-5-247.

(3) A person or entity is not liable to the department under this section when:

(a) a written release or waiver of the support lien or warrant for distraint issued by the department has been delivered to the person or entity;

(b) a determination has been made in an adjudicative proceeding, either administrative or judicial, that a support lien does not exist or that the lien has been satisfied; or

(c) the property subject to a support lien has been transferred to, paid over to, or repossessed by a person or entity holding:

(i) a prior perfected lien;

(ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

(iii) a perfected purchase money security interest, as defined by 30-9-107.

History: En. Sec. 18, Ch. 612, L. 1979; amd. Sec. 17, Ch. 549, L. 1989; amd. Sec. 17, Ch. 631, L. 1993.

Cross-References

Costs, Title 25, ch. 10.

Debtors of judgment debtor and those holding his property to answer, 25-14-103.

Legal interest, 31-1-106.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Filing costs and attorneys' fees to be recovered on foreclosure of liens, 71-3-124.

40-5-243. Release of excess to obligor. If any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person or entity may release the excess to the obligor without liability under this part.

History: En. Sec. 19, Ch. 612, L. 1979; amd. Sec. 18, Ch. 549, L. 1989.

Cross-References

How writ executed — return of excess, 25-13-402.

40-5-244. Banks and savings and loan associations — service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the obligor in the particular branch upon which service is made.

History: En. Sec. 20, Ch. 612, L. 1979; amd. Sec. 19, Ch. 549, L. 1989.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

40-5-245. Repealed. Sec. 27, Ch. 631, L. 1993.

History: En. Sec. 21, Ch. 612, L. 1979; amd. Sec. 47, Ch. 439, L. 1981.

40-5-246. Repealed. Sec. 27, Ch. 631, L. 1993.

History: En. Sec. 23, Ch. 612, L. 1979; amd. Sec. 48, Ch. 439, L. 1981; amd. Sec. 20, Ch. 549, L. 1989.

40-5-247. Warrant for distraint — effect — satisfaction of support lien — redemption. (1) (a) The department may issue a warrant for distraint to execute support liens established by 40-5-248 or to enforce and collect any money obligation authorized under this chapter.

(b) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based.

(c) A warrant must be signed by the director of the department or the director's designee.

(d) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(e) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

(2) (a) A warrant for distraint may be sent by the department to the sheriff or levying officer. Upon receipt of the warrant, the sheriff or levying officer shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A sheriff or levying officer shall return a warrant, along with any funds collected, within 90 days of the receipt of the warrant.

(c) Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

(d) If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of a support lien under 40-5-242.

(4) (a) Upon receiving payment in full of the unpaid warrant amount plus penalty and fees, if any, and accumulated interest, the department shall release the warrant.

(b) Upon receiving partial payment of the unpaid warrant amount or if the department determines that a release or partial release of the warrant will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the warrant for distraint. The department may release the warrant if it determines that the warrant is unenforceable.

(5) An obligor or other person or entity having an interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts.

History: En. Sec. 27, Ch. 702, L. 1989; amd. Sec. 18, Ch. 631, L. 1993.

Cross-References

Execution of judgment, Title 25, ch. 13.

40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint. (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247.

History: En. Sec. 25, Ch. 631, L. 1993.

40-5-249 and 40-5-250 reserved.

40-5-251. Debt payment schedule. At any time after notice to the obligor, the department may set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the obligor.

History: En. Sec. 22, Ch. 612, L. 1979; amd. Sec. 21, Ch. 549, L. 1989.

Cross-References

Parents liable to Department for Aid to Families With Dependent Children benefits — schedule of payments, 53-4-248.

40-5-252. Interest on debts due — waiver. (1) The department may collect interest on any support debt due and owing to it at the statutory interest rate payable on judgments recovered in the courts of this state.

(2) No provision of this part may be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

History: En. Sec. 24, Ch. 612, L. 1979; amd. Sec. 22, Ch. 549, L. 1989.

Cross-References

Interest on judgments, 25-9-205.

40-5-253. Administrative findings and order — administrative remedies — judicial review. (1) It is the intent of this part that administrative findings and orders be subject to judicial review, but administrative remedies must be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Such review must be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in this part may be construed to abridge or in any way affect the obligor's right to counsel during any and all judicial or administrative proceedings pursuant to this part.

History: En. Sec. 25, Ch. 612, L. 1979; amd. Sec. 23, Ch. 549, L. 1989.

Cross-References

Right to counsel, Art. II, sec. 24, Mont. Const.

Judicial review of contested cases, Title 2, ch. 4, part 7.

40-5-254. Statutory limitations. Support debts ensuing as a result of determinations made through the administrative procedures described in this part are subject to statutory limitations as set forth in Title 27, chapter 2.

History: En. Sec. 26, Ch. 612, L. 1979; amd. Sec. 24, Ch. 549, L. 1989.

Cross-References

Lien extinguished by Statute of Limitations, 71-3-122.

40-5-255. Charging off child support debts as uncollectible — sale of support debts. (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 10 years from the date of termination of the support obligation or after 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. A proceeding or action under the provisions of this part may not be begun after expiration of the 10-year period to institute collection of a support debt. This part may not be construed to render invalid or nonactionable a warrant for distraint issued by the department prior to the expiration of the 10-year period or an assignment of earnings executed prior to the expiration of the 10-year period.

(3) The department may discount and sell to a private collection agency, credit bureau, or other private entity any interest that the state and the department may have in the unpaid balance of the support debt created by 40-5-221 and 53-4-248 or assigned to the department under 53-2-613.

(a) The sale must be by sealed bid to the highest bidder provided that the highest bid is not less than 10% of the value of the support debt subject to the sale.

(b) The sale must be subject to conditions and terms that the department may set out in a sales contract.

(c) The department shall publish notice of the sale in a newspaper having statewide circulation once a week for 4 successive weeks.

(d) Proceeds must be paid into the state treasury to the credit of the child support enforcement division special revenue fund.

History: En. Sec. 27, Ch. 612, L. 1979; amd. Sec. 49, Ch. 439, L. 1981; amd. Sec. 3, Ch. 561, L. 1985; amd. Sec. 25, Ch. 549, L. 1989; amd. Sec. 19, Ch. 631, L. 1993; amd. Sec. 10, Ch. 60, L. 1995; amd. Sec. 6, Ch. 264, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 60 in (2), near middle of first sentence after "support obligation", inserted "or after 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later".

Chapter 264 inserted (3) authorizing Department to sell interest in unpaid balance of support debt and providing terms of sale. Amendment effective March 28, 1995.

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

"Support obligation" — spousal maintenance, 40-5-201.

Department authorized to enforce spousal maintenance awards, 40-5-207.

Lien extinguished by Statute of Limitations, 71-3-122.

40-5-256. Employee debtor rights protected — limitation. No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant for distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months.

History: En. Sec. 28, Ch. 612, L. 1979; amd. Sec. 50, Ch. 439, L. 1981.

Cross-References

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Assignments, 40-4-207.

40-5-257. Assignment of earnings to be honored — effect. (1) Any person, firm, corporation, association, political subdivision, or department of the state employing an obligor shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to a support order presented by the department. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department.

(2) Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department is released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

History: En. Sec. 29, Ch. 612, L. 1979; amd. Sec. 26, Ch. 549, L. 1989.

Cross-References

Property exempt from execution — earnings of judgment debtor, 25-13-614.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Assignments, 40-4-207.

40-5-258 through 40-5-260 reserved.

40-5-261. Procedures for making information available to consumer reporting agencies. (1) The department may make information about a support debt available to consumer reporting agencies, as defined in 31-3-102, upon request. The department may charge a fee to recover the cost of responding to requests for support debt information. The department shall provide advance notice to the obligor concerning the proposed release of information. However, lack of actual notice does not preclude the release of information to consumer reporting agencies. The notice may be incorporated into any notice served pursuant to Title 17, chapter 4, part 1; Title 40, chapter 5, part 4; this part; or the federal income tax refund intercept program under 42 U.S.C. 664. The notice must inform the obligor of the methods available for contesting the accuracy of the information.

(2) If contacted by an obligor wishing to contest the accuracy of information proposed for release to consumer reporting agencies, the department shall conduct an informal administrative review, separately or in conjunction with a hearing on any other matter concerning the obligor's support obligation, to determine the accuracy of the information. The accuracy of information provided by the department to consumer reporting agencies may be contested in accordance with the procedures provided in 31-3-124. An obligor dissatisfied with the outcome of a reinvestigation conducted by a consumer reporting agency may receive an administrative hearing on the accuracy of the information by filing a written request with the department. The hearing must be conducted in accordance with 40-5-226, and the resulting findings are subject to judicial review as provided in 40-5-253.

(3) The department shall within 30 days notify all consumer reporting agencies that were provided information pursuant to this section if a reported support debt is paid in full or is no longer being enforced by the department.

History: En. Sec. 6, Ch. 418, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Consumer reporting agencies, Title 31, ch. 3, part 1.

40-5-262. Rules. The department shall adopt rules to implement this section, including rules:

(1) providing for advance notice to the obligor of support debt information requested under 40-5-261;

(2) establishing the procedure for contesting the accuracy of information proposed for release to consumer reporting agencies;

(3) providing for consideration of the obligor's payment record, the availability of other remedies, and other matters relevant to determining whether the release of information would promote the collection of a support debt or would be inappropriate under the circumstances; and

(4) governing the format and frequency of reports to consumer reporting agencies.

History: En. Sec. 7, Ch. 418, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter.

History: En. Sec. 2, Ch. 287, L. 1989; amd. Sec. 56, Ch. 328, L. 1993.

Cross-References

Establishment of paternity through administrative action, 40-5-231 through 40-5-237.

40-5-264. Cooperative agreements. (1) The department may enter into cooperative agreements with any person, firm, corporation, association, political subdivision, or department of this state as a cooperating contractor to provide enforcement services.

(2) A cooperating contractor:

(a) shall act as an independent support enforcement contractor if the cooperating contractor provides enforcement services; and

(b) may pursue any remedy available to the department, as limited by the terms of the cooperative agreement.

(3) The department may refer an enforcement case to a cooperating contractor in the county where the obligor resides.

History: En. Sec. 3, Ch. 287, L. 1989.

40-5-265 through 40-5-270 reserved.

40-5-271. Registration of support orders. (1) The department shall establish and maintain a support order registry.

(2) The registry must contain the support orders issued by the department.

(3) In a IV-D case, the department shall, upon the request of the obligor or the obligee, or may register a support order of a district court of this state or a support order of a court or administrative agency of another state with jurisdiction to enter the order. A certified copy of the order to be registered must accompany the written request for registration.

(4) Upon registration, the support order must be treated in the same manner and have the same effect as a support order issued by the department, and an abstract of the order may be filed under the provisions of 40-5-227. Review of the order under 40-5-272 is available only when the department is providing child support enforcement services for the order.

History: En. Sec. 1, Ch. 266, L. 1991.

40-5-272. Application for review of child support orders. (1) Upon the application of the department, the obligor, or the obligee, a hearing officer appointed pursuant to 40-5-273 shall review support orders filed with the support order registry. The purpose of the review is to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273 is authorized when:

(a) the obligor and the obligee reside in this state; or

(b) jurisdiction can be obtained as provided under 40-5-231.

(3) Jurisdiction to review a child support order under this section does not confer jurisdiction for any other purpose, such as custody or visitation disputes.

(4) Criteria constituting sufficient grounds for review of a child support order include:

(a) inconsistency with this state's guidelines, unless the inconsistency is considered negligible under department rules; or

(b) availability of health insurance coverage to the obligor's child through the obligor's employment or other group insurance.

(5) The department shall make available procedures and forms that allow the obligor or the obligee to complete the review process without legal counsel.

(6) To the extent that they are consistent with this section, the provisions of 40-5-145, 40-5-149, and 40-5-150 apply to this section.

History: En. Sec. 2, Ch. 266, L. 1991; amd. Sec. 50, Ch. 328, L. 1993.

40-5-273. Administrative review of child support orders — modifying orders. (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative hearing, and a hearing officer must be appointed by the department. Unless the hearing officer determines under rules of the department that an in-person hearing is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing must be served on the obligor and the obligee at least 60 days before the hearing. The order must include the following information as an exception to 2-4-601:

(a) the date and time for the hearing and, if appropriate, the place for the hearing;

(b) a statement of the purpose, objectives, and possible consequences of the review;

(c) a statement of the right of the obligor and the obligee to request the hearing officer to issue subpoenas compelling the appearance of witnesses and the production of documents for the hearing; and

(d) a requirement that the obligor and the obligee provide the hearing officer with telephone numbers at which they and their witnesses may be contacted for the hearing.

(2) The hearing officer may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be personally served with the order scheduling the hearing. The hearing officer may also issue subpoenas ordering the department or other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the hearing officer must be provided to the department and other parties prior to the hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the hearing officer under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered an admission that the party or parties do not oppose the modification.

(4) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 10 days of issuance unless a party provides the hearing officer an affidavit showing good cause for failure to provide a telephone number or failure to be available for the hearing when telephoned.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the hearing officer shall, to ensure the equitable determination of a support obligation, during a review hearing:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the hearing; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the hearing officer may allow the counsel to present that party's case.

(7) The hearing officer shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. If the hearing officer determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the hearing officer determines, after the review hearing, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order must prospectively modify the underlying support order from the date of service of the order scheduling the hearing.

(8) The hearing officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearing officer determines health insurance is available to the child of the obligor, the hearing officer shall issue a modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearing officer determines that health insurance is not available to the child of the obligor, he shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of his current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d).

History: En. Sec. 3, Ch. 266, L. 1991.

40-5-274. Child support payments to follow the child. (1) A support order issued or modified under this part must contain a provision requiring the child support to be paid to:

(a) the legal custodian of the minor child;

(b) (i) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(ii) the court for the benefit of the minor child;

(c) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(d) any assignee or other person, organization, or agency authorized to receive or collect child support.

(2) An order that omits the provision required by subsection (1) is subject to the requirements of subsection (1) without need for an amendment to the order or for any further action by the department.

History: En. Sec. 24, Ch. 631, L. 1993.

Part 3
Child Support Income Deduction

Part Cross-References

Child support, 40-4-204.

Assignments of earnings, 40-4-207.

Administrative enforcement of support, Title 40, ch. 5, part 2.

Child Support Enforcement Act of 1985, Title 40, ch. 5, part 4.

Obligations of parents for the support and education of their children, 40-6-211.

40-5-301. Short title. This part may be cited as the "Child Support Income Deduction Act of 1981".

History: En. Sec. 1, Ch. 171, L. 1981.

40-5-302. Purpose. The purpose of this part is to provide a direct method of deducting money from a person's income for the payment of child support if that person has been delinquent in the payment of court-ordered child support.

History: En. Sec. 2, Ch. 171, L. 1981.

Cross-References

Child support, 40-4-204.

Obligations of parents for support and education of their children, 40-6-211.

40-5-303. Petition for income deduction — who may initiate. A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of public health and human services.

History: En. Sec. 3, Ch. 171, L. 1981; amd. Sec. 31, Ch. 609, L. 1987; amd. Sec. 23, Ch. 702, L. 1989; amd. Sec. 137, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (3) substituted "department of public health and human services" for "department of family services or the department of social and rehabilitation services of the state of Montana". Amendment effective July 1, 1995.

Cross-References

Representation of child, 40-4-205.

Enforcement of minor's rights, 41-1-202.

40-5-304. When child support payments considered delinquent. (1) Nonpayment of child support required by any order of a district court or by a similar order of a court of another jurisdiction becomes delinquent under this part when the amount owed is equal to 3 months of child support payments.

(2) Child support payments may be considered delinquent under this part only in reference to a court order setting child support payments.

(3) In the case of support orders not subject to immediate income withholding under 40-5-315, including cases in which the court or administrative authority has made a finding of good cause or alternative arrangement, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to be delinquent in the payment of support due under a support order in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part. For the purposes of this section, "alternative arrangement" has the meaning provided in 40-5-315(3)(b).

History: En. Sec. 4, Ch. 171, L. 1981; amd. Sec. 4, Ch. 635, L. 1991.

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-305. Notice. On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.

History: En. Sec. 5, Ch. 171, L. 1981.

Cross-References

Service by an officer, Title 25, ch. 3, part 2.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

40-5-306. Discharge of delinquency. If the obligor pays the total amount of child support due and payable within the 15 days specified in 40-5-305, no order for deduction may issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

History: En. Sec. 6, Ch. 171, L. 1981.

40-5-307. Delinquency of child support denied — hearing. If the obligor responds to the notice and denies that child support payments are delinquent, the district court shall hold a hearing to determine whether or not there is a deficiency in child support payments sufficient to be delinquent under 40-5-304.

History: En. Sec. 7, Ch. 171, L. 1981.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

40-5-308. Order for deduction from income for child support payments. (1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support.

(2) The order must state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the wages or salary of the obligor each pay period and the amount, if any, allowed to the employer under 40-5-309(2) as a fee for handling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) the name and address of the clerk of court to whom the deduction is to be paid by the employer.

History: En. Sec. 8, Ch. 171, L. 1981; amd. Sec. 4, Ch. 276, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 276 in (2)(e), at beginning, inserted "the name and address of the clerk of court" and near end substituted "paid" for "made payable and where it is to be forwarded"; and made minor changes in style. Amendment effective March 29, 1995.

Cross-References

Earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

40-5-309. Amount to be deducted from income. (1) (a) The amount of money to be deducted each pay period from the obligor's income is:

(i) (A) the amount of money necessary to pay current installments of child support as they become due and payable; plus

(B) the amount of money that, when deducted in equal amounts each pay period, will pay off all outstanding child support payments delinquent within 2 years; or

(ii) not less than 25% of the obligor's disposable earnings.

(b) If withholding is annualized, when deducted in equal amounts, the amount withheld each pay period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(4) Except as provided in 40-5-315, the child support income deduction must cease when there is no past-due child support owing, unless the district court orders continued income deductions for payment of child support installments as they become due and payable.

History: En. Sec. 9, Ch. 171, L. 1981; amd. Sec. 1, Ch. 625, L. 1987; amd. Sec. 17, Ch. 635, L. 1991; amd. Sec. 11, Ch. 60, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 60 inserted (1)(b) regarding annualized withholding; and made minor changes in style.

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-310. Priority of income deduction. An order for the deduction of income for the payment of delinquent child support payments takes precedence over any:

(1) assignment of wages or salary;
(2) voluntary deductions from the obligor's wages or salary; and
(3) other court-ordered garnishment of wages or salary.

History: En. Sec. 10, Ch. 171, L. 1981.

Cross-References

Earnings of judgment debtor exempt from execution, 25-13-614.

What property subject to attachment, 27-18-102.

Wage brokers — restrictions upon assignment of wages or salary, 31-1-304.

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

40-5-311. Remedy not exclusive. The remedy provided in this part for the collection of unpaid child support is not exclusive. This part provides a remedy in addition to all other remedies in law available to obligees of unpaid child support.

History: En. Sec. 11, Ch. 171, L. 1981.

Cross-References

Remedies additional, 40-5-144, 40-5-404.

40-5-312. Duties of employers. (1) An employer who has been served with an order for deduction under this part shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The employer shall, within 10 working days of the date the obligor is paid, promptly pay the deducted amount as directed by the order. The employer shall include with the payment a statement indicating the date the amount was deducted from the obligor's wages or salary.

(2) Whenever an employer receives more than one wage deduction order from the same district court, the employer may combine all amounts deducted into a single payment for that month, with the portion that is attributable to each obligor separately designated.

(3) Whenever there is more than one deduction order against a single obligor the employer shall:

(a) honor all wage deduction orders to the extent that the total amount deducted from the obligor's wages or salary does not exceed the limits set in 40-5-309; and

(b) comply with the orders in the sequence in which they were served upon the employer except for income withholding orders issued by the department of public health and human services. Under 40-5-423, orders issued by the department have priority over all other orders without regard to the sequence in which they were served.

(4) The employer shall promptly notify the clerk of the district court that issued the deduction order of the termination of the obligor's employment and provide the obligor's last-known address and the name and address of the obligor's new employer, if known.

History: En. Sec. 1, Ch. 276, L. 1995.

Compiler's Comments

Effective Date: Section 8, Ch. 276, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 29, 1995.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Pursuant to sec. 2, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Family Services.

Pursuant to sec. 568, Ch. 546, L. 1995, the Code Commissioner substituted Department of Environmental Quality for Department of Health and Environmental Sciences.

40-5-313. Obligor rights protected — penalties. (1) An employer may not discharge, discipline, or refuse to hire a person because:

(a) the person has a child support obligation;

(b) a withholding order has been issued for the person's wages or salary; or

(c) proceedings have been initiated under this part.

(2) An employer who violates the provisions of this section may be fined not more than $100.

History: En. Sec. 2, Ch. 276, L. 1995.

Compiler's Comments

Effective Date: Section 8, Ch. 276, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 29, 1995.

40-5-314. Civil liability for failure to comply with wage deduction order. (1) An employer who knowingly fails to deduct support money from the obligor's wages or salary and remit the money to the district court when ordered to do so under this part is liable to the obligee of the support order for any amount up to the accumulated amount the employer should have deducted and remitted.

(2) An employer who complies with a deduction order under this part is not liable to the obligor or to any other person claiming rights derived from the obligor for wrongful deductions.

History: En. Sec. 3, Ch. 276, L. 1995.

Compiler's Comments

Effective Date: Section 8, Ch. 276, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 29, 1995.

40-5-315. Immediate income deductions. (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the salaries and wages of a person obligated to pay child support by an order of a district court issued after October 1, 1991, are subject to an immediate deduction order under 40-5-308 on the effective date of the order, regardless of whether there is a delinquency.

(2) An obligor's salaries and wages are not subject to deduction under this section in any case in which the district court finds:

(a) that there is good cause not to require immediate deduction; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), “alternative arrangement” means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of public health and human services, and that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions provided for by 40-5-308 for service upon the obligor’s employer. The deduction order must direct the employer to promptly deliver the amount deducted to the clerk of court for distribution to the obligee.

(5) Wage deductions under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.

(7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or other law, the support order is subject to immediate orders to deduct income under this section.

(b) Withholding income under this section must be imposed when an obligor has wages or salaries derived from within this state and the support order was issued in another state.

(8) This section applies only to support orders that are not being enforced by the department under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section.

History: En. Sec. 16, Ch. 635, L. 1991; amd. Sec. 138, Ch. 546, L. 1995.

Compiler’s Comments

1995 Amendment: Chapter 546 in (3)(b) substituted “department of public health and human services” for “department of social and rehabilitation services”. Amendment effective July 1, 1995.

Part 4

Child Support Enforcement Act Administrative Income Withholding

Part Cross-References

Administrative enforcement of support, Title 40, ch. 5, part 2.

Child support income deduction, Title 40, ch. 5, part 3.

40-5-401. Short title. This part may be cited as the "Child Support Enforcement Act".

History: En. Sec. 1, Ch. 571, L. 1985; amd. Sec. 6, Ch. 702, L. 1989.

40-5-402. Purpose — applicability. (1) The purpose of this part is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

(2) This part applies to all support obligations being enforced or collected by the department of public health and human services pursuant to Title IV-D of the Social Security Act.

(3) When the requirements of this part are met, an employer or other payor of income to a person having a support obligation under a court or administrative order must be directed to withhold from the person's income in an amount sufficient to meet the support obligation and to defray any arrearages that are due or may become due.

(4) Unless an exception under 40-5-411(4) is contained in a support order, withholding of income is required under this part without need for any amendment to the support order involved or any action by the court or entity that issued the support order even though the support order did not address withholding or the support order provided for other payment arrangements.

(5) Withholding, once commenced, applies to all current and subsequent payors of income to a person obligated to pay support until the withholding is terminated as provided by this part.

(6) The provisions for income withholding under this part take precedence over any other law or court order.

History: En. Sec. 2, Ch. 571, L. 1985; amd. Sec. 5, Ch. 635, L. 1991; amd. Sec. 139, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Cross-References

Child support, 40-4-204.

Obligations of parents, Title 40, ch. 6, part 2.

40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(4) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(5) "Obligor" means a person who owes a duty to make payments under a support order.

(6) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(7) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support.

History: En. Sec. 3, Ch. 571, L. 1985; amd. Sec. 24, Ch. 702, L. 1989; amd. Sec. 6, Ch. 635, L. 1991; amd. Sec. 140, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Cross-References

Interest on judgments, 25-9-205.

Earnings of judgment debtor exempt from execution, 25-13-614.

Maintenance, 40-4-203.

Child support, 40-4-204.

Department authorized to enforce maintenance awards, 40-5-207.

40-5-404. Other remedies available. The remedies provided in this part are in addition to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages.

History: En. Sec. 20, Ch. 571, L. 1985; amd. Sec. 7, Ch. 702, L. 1989.

Cross-References

Administrative enforcement of support, Title 40, ch. 5, part 2.

Child support income deduction, Title 40, ch. 5, part 3.

40-5-405. Rulemaking authority. The department shall adopt rules and forms to participate in and carry out the provisions of this part.

History: En. Sec. 21, Ch. 571, L. 1985.

Cross-References

"Rule" defined, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-406 through 40-5-410 reserved.

40-5-411. Immediate income withholding. (1) Except as provided in subsection (4), in the case of a child support order, whether temporary or final, that is issued by a court or administrative authority of this state after January 1, 1990, the income of the obligor is subject to immediate withholding under this part regardless of whether support payments are in arrears.

(2) After October 1, 1991, when a support order of another state is registered in Montana under the provisions of 40-5-184 or other applicable law, the support obligation is subject to immediate income withholding under this section.

(3) The department may direct the payor of income to the obligor to commence the withholding of the obligor's income on:

(a) the effective date of the support order or the date of registration of the support order; or

(b) the date, if any, that the department becomes authorized by law to provide child support enforcement services.

(4) An obligor's income is not subject to immediate withholding if the court or administrative authority that issued or modified the support order finds:

(a) that there is good cause not to require immediate withholding; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(5) For the purposes of subsection (4), any finding of good cause not to require immediate income withholding must be based on at least:

(a) a written determination and explanation by the court or administrative authority as to why implementation of immediate income withholding would not be in the best interests of the child; and

(b) proof of timely payment of previously ordered support in cases involving the modification of support orders.

(6) Immediate withholding under this section terminates only:

(a) upon the conditions provided in 40-5-417; or

(b) at the request of the obligor if:

(i) withholding has not been previously terminated and subsequently initiated under 40-5-412 because of a delinquency; and

(ii) the obligor meets one of the exemptions under subsection (4).

History: En. Sec. 4, Ch. 571, L. 1985; amd. Sec. 8, Ch. 702, L. 1989; amd. Sec. 7, Ch. 635, L. 1991.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

40-5-412. Delinquency income withholding. (1) In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's support payment. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(2) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is an arrearage, on the earlier of:

(a) the date the obligor requests that withholding begin; or

(b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

(3) To accomplish the purpose of subsection (1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

(4) The only basis for contesting withholding under this section is a mistake of fact, which includes a mistake:

(a) concerning the obligor's identity;

(b) concerning the existence of the support obligation;

(c) concerning the amount of support to be paid;

(d) in the determination that the delinquent support amounts owed are equal to or greater than 1 month's support payment;

(e) in computation of delinquent support amounts owed; or

(f) in the allegation that the obligor is in default of an alternative agreement.

History: En. Sec. 5, Ch. 571, L. 1985; amd. Sec. 9, Ch. 702, L. 1989; amd. Sec. 41, Ch. 16, L. 1991; amd. Sec. 8, Ch. 635, L. 1991.

40-5-413. Notice of intent to withhold income. (1) Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the department shall serve upon the obligor a notice of the intended action when:

(a) income withholding is initiated under 40-5-412 because of a delinquency;

(b) additional arrearages have accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrearages to the withholding order; or

(c) immediate withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.

(2) The notice must contain a statement:

(a) of the amount to be withheld, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the obligor's right to a hearing under 40-5-414 to contest the initiation of income withholding or modification of an existing order on the ground that the intended action is not proper because of mistake of fact, as provided in 40-5-412(4);

(d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor for the amount stated in the notice; and

(e) in those cases in which withholding is being initiated at the request of an obligee without regard to whether there is an arrearage as provided in 40-5-412(2), a statement that the obligor can require the obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

(3) The notice must be served upon the obligor personally or by certified mail.

History: En. Sec. 6, Ch. 571, L. 1985; amd. Sec. 10, Ch. 702, L. 1989; amd. Sec. 9, Ch. 635, L. 1991.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Certified mail, 1-1-202.

Actual and constructive notice, 1-1-217.

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

Montana Administrative Procedure Act, Title 2, ch. 4.

40-5-414. Hearing. (1) To contest the withholding of income initiated under 40-5-412 because of a delinquency or the modification of an existing order to withhold, an obligor may within 10 days of being served with notice of intent to withhold income under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(3) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearings examiner.

(4) If the obligor requests a hearing within the 10-day period:

(a) the initiation of delinquency income withholding by the department and the modification of an existing withholding order must be stayed until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. However, in a proceeding to initiate income withholding, if the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed. In a proceeding to modify an existing order, income withholding under the existing order to withhold is not stayed.

(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.

(5) The department shall issue an order to withhold income or a modified order to withhold in accordance with 40-5-415 if:

(a) the obligor fails to file a written request for hearing with the department within the specified 10-day period;

(b) the obligor fails to appear at a scheduled hearing;

(c) the hearings examiner determines from the evidence that the obligor owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum;

(d) there is an existing order to withhold and if the hearings examiner determines from the evidence that the obligor owes new or additional amounts in arrears; or

(e) in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the hearings examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.

(6) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date on which the obligor was served with the notice of intent to withhold income. When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.

(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

(8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearings examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation or determines that a modification of an existing order is proper, the department shall proceed with the intended action in accordance with 40-5-415.

History: En. Sec. 7, Ch. 571, L. 1985; amd. Sec. 11, Ch. 702, L. 1989; amd. Sec. 10, Ch. 635, L. 1991; amd. Sec. 12, Ch. 60, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 60 in (1), near beginning after "delinquency", inserted "or the modification of an existing order to withhold"; at beginning of first sentence of (4)(a), after "the", inserted "initiation of" and after "department" inserted "and the modification of an existing withholding order", at beginning of second sentence inserted "However, in a proceeding to initiate income withholding", and inserted third sentence providing that income withholding under an existing order is not stayed in a proceeding to modify; in (5), in introductory clause after "income", inserted "or a modified order to withhold"; in (5)(c), at beginning, substituted "hearings examiner" for "hearing officer"; inserted (5)(d) requiring issuance of a withholding order if evidence indicates that new or additional amounts are owed; in (8), near middle after "support obligation", inserted "or determines that a modification of an existing order is proper"; and made minor changes in style.

40-5-415. Order to withhold income — rules. (1) When the requirements of this part have been met, the department shall serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department;

(d) state the rights and duties of the payor under this part; and

(e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors. Whenever an obligor's income is subject to withholding for more than one obligee, the department may consolidate the payments received each month and distribute the income among the obligees according to department rules.

History: En. Sec. 8, Ch. 571, L. 1985; amd. Sec. 12, Ch. 702, L. 1989; amd. Sec. 11, Ch. 635, L. 1991; amd. Sec. 20, Ch. 631, L. 1993.

Cross-References

Actual and constructive notice, 1-1-217.

40-5-416. Determination of amount of income to be withheld. (1) (a) Subject to the limitations provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be the amount of money necessary to pay current installments of support as they become due and payable.

(b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:

(i) the amount of money that, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; or

(ii) 25% of the obligor's income.

(c) If income is being withheld under this part, the department may allow a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(d) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period. If withholding is annualized, when deducted in equal amounts, the amount withheld each pay period must be sufficient to pay all installments due in a 12-month period under the order to withhold.

(2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages.

History: En. Sec. 9, Ch. 571, L. 1985; amd. Sec. 13, Ch. 702, L. 1989; amd. Sec. 12, Ch. 635, L. 1991; amd. Sec. 13, Ch. 60, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 60 inserted (1)(d) regarding conditions of annualized withholding.

Cross-References

Earnings of judgment debtor — exemptions, 25-13-614.

40-5-417. Modification or termination of withholding orders. (1) The department may at any time modify the order to withhold income to:

(a) reflect payment in full of the arrearages by income withholding or otherwise;

(b) recognize an increase or decrease in the support order; or

(c) indicate any other reason the amount to be withheld is to be reduced or changed.

(2) If an arrearage occurs while the department is collecting an amount of money necessary to pay current installments of support as they become due and payable, the department may adjust the amount of income required to be withheld to also satisfy the arrearage, as provided in this part.

(3) An income withholding order terminates only when the department is no longer authorized under the law to collect support or, when appropriate, services rendered under 40-5-203 have come to an end or when the obligation to pay support is terminated and all arrearages are paid in full, whichever occurs first.

(4) The payment in full of any arrearage amount may not be the sole basis for termination of withholding as long as there is a support obligation enforceable by the department.

History: En. Sec. 14, Ch. 571, L. 1985; amd. Sec. 14, Ch. 702, L. 1989; amd. Sec. 13, Ch. 635, L. 1991.

Cross-References

Modification of child support, 40-4-219.

40-5-418. Payment records. (1) The department, in collecting, disbursing, or receiving payments pursuant to orders to withhold income, shall maintain complete, accurate, and clear records of all payments and disbursements.

(2) Certified payment records maintained by the department must, without further proof or foundation, be admitted into evidence in any legal proceedings under this part. Such records constitute prima facie evidence of the amount of support paid and arrearages that have accrued since the department began to monitor support payment in a case.

History: En. Sec. 15, Ch. 571, L. 1985.

Cross-References

Public records — presumption of correctness, 26-1-602.

Montana Rules of Evidence, Title 26, ch. 10.

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

40-5-419 and 40-5-420 reserved.

40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The payor shall, within 10 working days of the date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department. The payor shall include with the payment a statement indicating the date the amount was withheld from the obligor's income.

(2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion thereof which is attributable to each obligor separately designated.

(3) Whenever there is more than one order for withholding against a single obligor, the payor must comply with the orders in the sequence in which they were served upon the payor and must honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416.

(4) The payor must promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor.

History: En. Sec. 10, Ch. 571, L. 1985; amd. Sec. 14, Ch. 635, L. 1991.

40-5-422. Obligor rights protected — penalties. (1) An employer may not discharge, discipline, or refuse to hire an obligor:

(a) because the person has a child support obligation; or

(b) because of the institution of income withholding on the obligor's income or the initiation of proceedings under this part.

(2) Any person who violates this section may be fined not more than $500 and not less than $150 and may be required to make full restitution to the aggrieved obligor, including reinstatement and backpay.

History: En. Sec. 12, Ch. 571, L. 1985; amd. Sec. 18, Ch. 702, L. 1989.

Cross-References

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

40-5-423. Priority of income withholding. An order to withhold and deliver income under this part takes priority over any:

(1) wage or income deduction order under any other state law;

(2) voluntary or involuntary assignment of wages;

(3) other voluntary deductions from the obligor's income;

(4) levies, writs of execution, or garnishments of the obligor's income; and

(5) any other claims by creditors.

History: En. Sec. 13, Ch. 571, L. 1985.

Cross-References

What property subject to attachment, 27-18-102.

40-5-424. Civil liability for failure to comply with income withholding order. (1) A payor who fails to withhold and deliver support money from the obligor's income when ordered to do so under 40-5-415 is liable to the department for any amount up to the accumulated amount the payor should have withheld and delivered.

(2) No payor who complies with an order to withhold under this part is liable for wrongful withholding to the obligor or to any other person claiming rights derived from the obligor.

History: En. Sec. 11, Ch. 571, L. 1985.

Cross-References

Damages — measure of damages, Title 27, ch. 1, parts 2 and 3.

40-5-425. Repealed. Sec. 22, Ch. 635, L. 1991.

History: En. Sec. 5, Ch. 702, L. 1989.

40-5-426 through 40-5-430 reserved.

40-5-431. Registration of interstate income withholding orders. (1) Whenever an obligor, whether or not the obligor resides in this state, derives income within this state and an order for income withholding of the obligor's income has been issued by a public agency of another state as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the foreign withholding order, it must be treated in the same manner and have the same effect as an income withholding order issued by the department. The provisions of 40-5-188 through 40-5-191 apply to this section to the extent that they are consistent with this section.

(2) The application for registration of a foreign order for income withholding must include:

(a) a certified copy of the support order, with all modifications of the order;

(b) a certified copy of the income withholding order;

(c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the foreign jurisdiction for issuance of the income withholding order have been carried out in full;

(d) the name, address, and social security number of the obligor;

(e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the foreign jurisdiction extends to other income; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the foreign income withholding order is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department. Registration of a foreign income-withholding order under this section does not confer jurisdiction for any other purpose, such as modification of the support order, custody, or visitation.

History: En. Sec. 16, Ch. 571, L. 1985; amd. Sec. 51, Ch. 328, L. 1993.

Cross-References

Uniform Reciprocal Enforcement of Support Act, Title 40, ch. 5, part 1.

40-5-432. Application for interstate withholding. (1) Whenever an obligor resides in this state and derives income within this state and a support order issued in another jurisdiction is being enforced by a public agency of that jurisdiction pursuant to Title IV-D of the Social Security Act, that agency may apply to the department for income withholding services.

(2) The application for interstate income withholding must include:

(a) a certified copy of the support order, with all modification thereof;

(b) an affidavit by the obligee containing a statement that the obligor is delinquent in the payment of support in an amount equal to at least 1 month's support payment and a computation of the period and total amount of the arrearage as of the date of the application;

(c) a certified copy of the payment record if such records are maintained by the agency or any other agency within that jurisdiction;

(d) the name, address, and social security number of the obligor;

(e) the name and address of all known payors within this state; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be sent.

(3) Upon receipt of the application, the department shall commence procedures to establish orders for income withholding, including notice and opportunity for hearing under this part. The department shall further advise the obligor that the income withholding was requested on the basis of an application from another jurisdiction.

(4) In any hearing based on an application under this section, the certified copy of the support order and affidavit, without further proof or foundation, constitutes prima facie evidence that the support order is valid and that the obligee or public agency is entitled to an order of income withholding and that the amount of current support payments and arrearages are as stated.

(5) In accordance with 40-5-414, a final decision on whether or not income withholding is appropriate must be rendered within 45 days of service of notice on the obligor. If, however, because of the interstate aspects of the case, the hearing examiner is unable to resolve a dispute over the amount of arrearages within such time and the hearing examiner has found that the obligor is delinquent in an amount equal to at least 1 month's support payment, the hearing examiner shall authorize immediate service of the order for withholding as to current support and may continue the hearing on the disputed amounts beyond the 45-day limit.

History: En. Sec. 17, Ch. 571, L. 1985.

40-5-433. Additional duties of department in interstate income withholding. (1) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency which requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

(2) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the interstate application.

History: En. Sec. 18, Ch. 571, L. 1985; amd. Sec. 15, Ch. 635, L. 1991.

40-5-434. Initiation of income withholding in other jurisdictions. Whenever the department is authorized or required under the laws of this state to enforce and collect on a support order and the obligor is employed or has a source of income in another state, the department shall request the agency responsible for income withholding in that state to implement income withholding procedures. The department shall compile and transmit to the withholding agency of the other state all documentation required by the law of that state necessary for the purpose of obtaining an income withholding order in that state. The department shall also transmit to the withholding agency a certified copy of any subsequent modification of the support order.

History: En. Sec. 19, Ch. 571, L. 1985.

40-5-435 through 40-5-439 reserved.

40-5-440. Repealed. Sec. 34, Ch. 504, L. 1995.

History: En. Sec. 18, Ch. 635, L. 1991.

40-5-441. Repealed. Sec. 34, Ch. 504, L. 1995.

History: En. Sec. 19, Ch. 635, L. 1991.

40-5-442. Repealed. Sec. 34, Ch. 504, L. 1995.

History: En. Sec. 20, Ch. 635, L. 1991.

40-5-443. Payors to provide information — exemption from liability. (1) For the purposes of this part, upon written request by the department, a payor or former payor and any labor union of which the obligor or obligee is or may have been a member shall provide the department with the following information, if known, regarding the obligor or obligee:

(a) last-known residential address;

(b) social security number;

(c) dates of employment or union membership;

(d) amounts of wages, salaries, commissions, contract proceeds, and other earnings or amounts paid;

(e) whether health insurance coverage is or was available through the payor or union and, if so:

(i) the name of the insurer or health care provider;

(ii) the policy numbers or other identifiers; and

(iii) the persons covered; and

(f) names, telephone numbers, and addresses of current and former employers, payors, and unions.

(2) A payor or union that discloses information to the department in compliance with this section is exempt from any liability to the obligor or obligee that may result from the disclosure.

History: En. Sec. 21, Ch. 635, L. 1991; amd. Sec. 7, Ch. 264, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 264 in (1), in two places in introductory clause, and in (2), after "obligor", inserted "or obligee"; in (1)(d) inserted "contract proceeds", inserted "or amounts", and after "amounts paid" deleted "to the obligor during any period when the department provided support enforcement services"; in (1)(e), after "was available", deleted "to the obligor"; inserted (1)(f) concerning employers, payors, and unions; in (2), after "payor", inserted "or union"; and made minor changes in style. Amendment effective March 28, 1995.

Part 5 reserved

Part 6

Civil Contempt for Nonsupport

40-5-601. Failure to pay support — civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

(a) that issued the support order;

(b) of the judicial district in which the obligated person resides; or

(c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

(a) there is a support order issued by a court or administrative agency of this or another state with jurisdiction to enter the order;

(b) the obligated person had actual or constructive knowledge of the order; and

(c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

(a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a $500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order.

History: En. Sec. 1, Ch. 523, L. 1993.

Part 7

Suspension of Licenses for Nonsupport

40-5-701. Definitions. As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

(12) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(13) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department.

History: En. Sec. 3, Ch. 523, L. 1993; amd. Sec. 141, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

40-5-702. Notice of intent to suspend license. (1) Upon the petition of an obligee alleging the existence of a delinquency, a support enforcement entity may issue a notice of intent to suspend a license.

(2) The notice must be served upon the obligor personally or by certified mail and may:

(a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obligor's license will be suspended 60 days after service unless within that time the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity; or

(c) appears and shows cause in a hearing before the support enforcement entity under 40-5-703 that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under 40-5-703 are subject to the contested case provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 4, Ch. 523, L. 1993.**

40-5-703. Hearing — order suspending license. (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the obligor has entered into a payment plan.

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the order suspending a license to the licensing authority and the obligor.

(6) The determinations of the department under this section are a final agency decision and are subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

(7) A determination made by the support enforcement entity under this part is independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license.

History: **En. Sec. 5, Ch. 523, L. 1993.**

40-5-704. Suspension, denial, and nonrenewal of licenses. (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under 40-5-703 suspending a license must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, or other licensed activity while the obligor's license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with this part.

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension of a license issued by the department, this part supersedes those requirements.

History: En. Sec. 6, Ch. 523, L. 1993; amd. Sec. 79, Ch. 418, L. 1995; amd. Sec. 142, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 in (8) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (8), after "license issued by the department", deleted "of health and environmental sciences". Amendment effective July 1, 1995.

40-5-705 through 40-5-708 reserved.

40-5-709. Nondisciplinary suspension for failure to pay child support. Notwithstanding any other provision of this title, the department has the authority to suspend a license under this part without any action by the licensing authority. The licensing authority shall, upon receipt of an order issued by the support enforcement entity, suspend the license of the named individual. The suspension must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not apply.

History: En. Sec. 7, Ch. 523, L. 1993.

40-5-710. Stay of suspension of license — payment plan — hardship. (1) An obligor may at the time of the hearing conducted under 40-5-703 or at any time after the hearing petition the support enforcement entity for an order staying suspension of the license.

(2) The support enforcement entity shall consider the obligor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The support enforcement entity may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the licensing authority and the obligor.

(6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license.

History: En. Sec. 8, Ch. 523, L. 1993.

40-5-711. Termination of order to suspend license. (1) When the support enforcement entity determines that the support debt or support obligation is paid in full, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the licensing authority and the obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency.

History: En. Sec. 9, Ch. 523, L. 1993.

40-5-712. Fees. A licensing authority subject to this part may charge the obligor a fee to cover the administrative costs incurred by the licensing authority under this part. Fees collected pursuant to this section by a licensing authority with a state special revenue fund must be deposited in the state special revenue fund for the use of the licensing authority to pay the costs of administering this part.

History: En. Sec. 10, Ch. 523, L. 1993.

40-5-713. Rulemaking authority. The department shall adopt rules necessary for the implementation and administration of this part. The licensing authority shall adopt rules necessary for the implementation and administration of this part.

History: En. Sec. 11, Ch. 523, L. 1993.

Part 8
Medical Support Order Enforcement

Part Compiler's Comments

Effective Date: Section 35, Ch. 504, L. 1995, provided: "[This act] is effective July 1, 1995."

40-5-801. Short title. This part may be known and cited as the "Medical Support Reform Act".

History: En. Sec. 1, Ch. 504, L. 1995.

40-5-802. Purpose. The purpose of this part is to promote the health and medical care of children and to conserve the expenditure of public assistance funds by ensuring that children have access to reasonable health insurance coverage or a health benefit plan provided by their parents, who are primarily responsible for their support.

History: En. Sec. 2, Ch. 504, L. 1995.

40-5-803. Scope. This part does not expand any coverage available to any individual under any health insurance coverage or a health benefit plan required under federal law or Title 33, chapter 22, though this part may expand the class of children who may be eligible for individual insurance or health benefit plan coverage due to a duty of support owed to them by their parents.

History: En. Sec. 3, Ch. 504, L. 1995.

40-5-804. Definitions. For purposes of this part, the following definitions apply:

(1) "Child" means an individual, whether over or under 18 years of age, to whom or on whose behalf a legal duty of support is owed by a parent. The term includes but is not limited to a child enrolled or eligible for enrollment under a health benefit plan or individual insurance policy.

(2) "Child support guidelines" means guidelines adopted under the provisions of 40-5-209.

(3) "COBRA" means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, under which dependent children of employees may continue to receive, for a limited time under specific circumstances, health plan coverage after termination of employment.

(4) "Department" means the department of public health and human services as provided for in 2-15-2201.

(5) "Health benefit plan" or "plan" means a group health benefit plan or combination of plans, other than public assistance programs, that provides medical care or benefits for a child. The term includes but is not limited to a health maintenance organization, self-funded group, medical or health services corporation, or similar plan.

(6) "Individual insurance" means health or medical insurance coverage other than a group health benefit plan or public assistance that is or may be provided individually for a child.

(7) "Medical care" means diagnosis, cure, mitigation, treatment, or prevention of disease, illness, or injury, including well baby checkups, periodic examinations, and any other undertaking for the purpose of affecting any structure or function of the body.

(8) "Medical support order" means a judgment, decree, or order, including approval of a settlement agreement issued by a tribunal of competent jurisdiction, that provides for the medical care of a child and that complies with the requirements of this part.

(9) "Obligated parent" means the parent who is required by a medical support order to provide for the medical care of a child. The obligated parent is not necessarily the same as an obligor for child support.

(10) "Parent" means a father or mother and includes a child's guardian or other adult caretaker having lawful charge of the child.

(11) "Payor" or "payor of income" means a person, firm, corporation, association, union, employer, trustee, political subdivision, state agency, or any agent thereof who pays income to a parent on a periodic basis, who has or provides individual insurance or a health benefit plan, and who is subject to the jurisdiction of this state under Rule 4B of the Montana Rules of Civil Procedure.

(12) "Plan administrator" means the person or entity that assesses and collects premiums, accepts and processes claims, and pays benefits.

(13) "Primary parent" means the parent with whom the child resides for the most 24-hour periods in a plan year.

(14) "Qualified medical child support order" means an order that meets the requirements of 29 U.S.C. 1169.

(15) "Third-party custodian" means an agency or person other than a parent who:

(a) is authorized by legal process to have physical custody of a child;

(b) has actual physical custody of a child with the written consent of the parent or parents having legal custody of the child; or

(c) has actual physical custody of a child because of the parents' neglect, failure, or inability to provide for the child's support, medical care, and other needs.

(16) "Tribunal" means a court of competent jurisdiction or the department.

History: En. Sec. 4, Ch. 504, L. 1995.

Compiler's Comments

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

40-5-805. Establishing medical support orders. (1) In an action or proceeding to establish a child support order, whether temporary or final, or to modify an existing child support order, the tribunal shall also establish a medical support order. In establishing a medical support order, a tribunal shall consider:

(a) the best interests of the child;

(b) the child's present and anticipated needs for medical care;

(c) the financial ability of the parents to pay for individual insurance or a health benefit plan; and

(d) the extent to which an available health benefit plan or individual insurance coverage is subsidized or reduced in cost by an employer or by participation in a plan on a group basis.

(2) Except as otherwise provided in this part, a tribunal may not consider a child's eligibility for a public assistance program as a factor in determining a parent's financial ability to afford individual insurance or a health benefit plan.

History: En. Sec. 5, Ch. 504, L. 1995.

40-5-806. Contents of medical support order. (1) A medical support order may specify terms for individual insurance coverage and, to the extent of options within an available health benefit plan, the terms for plan coverage, including:

(a) minimum required policy limits;

(b) minimum required coverage;

(c) maximum terms for deductibles or required copayments; and

(d) other significant terms.

(2) If a child is already covered by individual insurance or a health benefit plan, if the child does not have existing coverage but coverage can be obtained under a health benefit plan that is available to the primary parent, or if the child does not have existing coverage and coverage for the child under a plan is available to the other parent, then the medical support order must require participation in that plan unless:

(a) the cost of continuing coverage or the cost of the health benefit plan is not reasonable or cost-beneficial; or

(b) another plan or individual insurance is available that will better serve the interests of the parties.

(3) If health benefit plans are available to both parents at a combined cost that is reasonable or cost-beneficial and with benefits that are complementary or compatible as primary and secondary coverage, the medical support order must require both parents to provide coverage for the child.

(4) If, at the time of the medical support order, coverage for the child in a health benefit plan is not available to either parent, the parent other than the primary parent must be required to obtain individual insurance coverage for the child. If the cost of individual insurance is not reasonable or cost-effective:

(a) the parent other than the primary parent must be required to obtain individual insurance or a health benefit plan at such time in the future that it becomes available to that parent at reasonable cost. The requirements in this subsection (4) to obtain a plan are not enforceable if:

(b) the primary parent has obtained individual insurance or a health benefit plan for the child and both parents have agreed in writing to share the costs of maintaining the coverage; or

(c) the other parent persuades the tribunal that the cost of available health benefit plans is not reasonable or cost-beneficial.

(5) This section also applies when a child is placed with a third-party custodian, unless a parent has obtained individual insurance or a plan for the child and both parents have agreed in writing to share the costs of maintaining

the coverage or a parent persuades the tribunal that the cost of available individual insurance and plans is not reasonable or cost-beneficial. For purposes of this subsection, the primary parent is considered to be the parent with whom the child resided for the most 24-hour periods in the 12 months prior to placement with the third-party custodian.

(6) The medical support order must also provide that the cost of individual insurance or the health benefit plan, any copayments and deductibles required under the coverage, and all medical expenses for the child that are not covered by individual insurance or the plan must be shared between parents in accordance with the child support guidelines. If the order fails to designate each parent's share, each parent is liable for 50% of the costs and expenses.

(7) (a) Except as provided in subsection (7)(b), if the cost of individual insurance or a health benefit plan is not reasonable or cost-beneficial or if a plan is not otherwise available and if the child is a recipient of medical assistance under Title XIX of the federal Social Security Act or later becomes a recipient of medical assistance:

(i) when the child is a recipient together with a parent, the medical support order must require the other parent to pay $50 per month;

(ii) when the child is not a recipient with a parent, the medical support order must require each parent to pay $50 per month; and

(iii) when the child is a recipient with both parents, neither parent has an obligation under this subsection (7)(a).

(b) The tribunal may order the parent or parents to pay a greater or lesser amount each month as the tribunal finds appropriate to the circumstances.

(c) The amounts ordered to be paid under this subsection (7) must be paid to the department for return to the appropriate state treasury fund to help offset the costs of the medical assistance program.

(8) The costs of providing individual insurance or a health benefit plan may not be used as a direct offset to the child support obligation. However, as provided by the child support guidelines, the costs may be considered in making or modifying a child support order.

(9) (a) Individual insurance or a health benefit plan is presumed to be available at reasonable cost if:

(i) an amount payable for individual insurance or health benefit plan premiums does not exceed 25% of the obligated parent's total parental child support obligation when calculated under the child support guidelines without credit for the medical support obligation; or

(ii) a health benefit plan is available through an employer or other group organization for which the premium is partially or entirely paid by the employer or other group organization.

(b) The presumption under subsection (9)(a) may be rebutted by clear and convincing evidence and the tribunal has the discretion to:

(i) order individual insurance or health benefit plan coverage when the amount of the premium may be greater than the presumptive amount; or

(ii) not order coverage when the amount of the premium is less than the presumptive amount.

History: En. Sec. 6, Ch. 504, L. 1995.

40-5-807. Mandatory provisions of medical support order. (1) Unless the tribunal expressly specifies otherwise, a medical support order must include terms directed toward the provisions of 40-5-806(2) through (9), even though a provision contained in those subsections may not apply to the parent's circumstances at the time the order is entered. The terms may be established as alternatives or contingencies that provide that if circumstances later change, the health needs of the child will continue to be met under one of the subsections without need for modification of the medical support order or other action by the tribunal that issued the order or any other tribunal of competent jurisdiction.

(2) If circumstances change and a parent believes that corresponding changes in costs are not reasonable or cost-beneficial, the parent may move to petition any appropriate tribunal for relief.

(3) If a health benefit plan is provided through an employer, union, or other group, the medical support order must also include provisions necessary to entitle the order to recognition as a qualified medical child support order.

History: En. Sec. 7, Ch. 504, L. 1995.

40-5-808. Persistence and duration of obligation. (1) A parent's obligation to provide for medical care of a child ceases only when the parental obligation to support a child terminates under law.

(2) The obligations to provide medical care for a child, provide financial child support, and provide or comply with visitation and custody arrangements are independent of each other, and the failure or inability to provide one or more does not reduce one of the others.

(3) A guardian or caretaker who is not the child's father or mother may not be compelled to support the child or be held liable for the child's expenses, except to the extent that the guardian or caretaker has voluntarily agreed in writing to assume the responsibility.

History: En. Sec. 8, Ch. 504, L. 1995.

40-5-809. Effect of order on health benefit plans. (1) The duties and responsibilities under a plan pursuant to this part apply equally to a union or employer that serves as the administrator of a plan for a parent who is a member or employee.

(2) A copy of a medical support order requiring enrollment of a child in a health benefit plan may be submitted to the plan administrator by either parent, by the department, or by a third-party custodian. The party submitting the order shall submit the child's name and birth date and the names and mailing addresses of the parents. If the child is a recipient of public assistance, the party submitting the order shall also submit the address of the department. If there is a third-party custodian of the child, the address of the third-party custodian must also be submitted.

(3) Presentation of the medical support order to the plan administrator authorizes each parent, the department, if the department has interest, or the third-party custodian to receive pertinent notices from the plan administrator and to freely communicate and generally interact with the plan administrator in all respects regarding the child's benefits as fully and effectively as if the obligated parent were to do so personally.

(4) If a medical support order requires the child to be enrolled in a health benefit plan, presentation of the order to the plan administrator binds the plan to enroll the child in the plan as provided by this part.

(5) If a health benefit plan is available through the obligated parent's employer or other payor of income, presentation of the medical support order to the payor binds the payor to enrollment of the child in the plan and to automatically deduct premium payments required by the plan from the obligated parent's income and remit them to the plan provider for as long as the obligated parent is eligible for coverage.

(6)(a) Ambiguities and discrepancies in an order may not be used to unreasonably or unnecessarily delay health benefit plan coverage for a child.

(b) If more than one plan is available to an obligated parent and the medical support order fails to specify a plan or combination of benefits to be provided for a child or if there has been a change in plans due to a change in employment of the obligated parent or for some other reason, the parties and the department shall apply the medical support order so as to provide the child with coverage under a plan that has a reasonable cost and that provides the child with benefits closest to those described in the order.

History: En. Sec. 9, Ch. 504, L. 1995.

40-5-810. Authorization to enroll and participate in health benefit plan. (1) A plan administrator shall enroll a child when given a medical support order even if the obligated parent fails to execute documents required by the plan. The parents, the department, and a third-party custodian may release to a plan provider, employer, union, or other group any information necessary to obtain or enforce medical support or to facilitate the preparation, submission, processing, verification, or payment of claims.

(2) The signature of either parent, of an authorized representative of the department, or of a third-party custodian authorizes the plan to receive and process claims and exercise any available options for the continuation or extension.

History: En. Sec. 10, Ch. 504, L. 1995.

40-5-811. Authorization to cure nonpayment of health benefit plan premium. In the case of an actual or threatened adverse action that would reduce or terminate plan benefits because of nonpayment of premium or insufficient payment of premium, the other parent, the department, or the third-party custodian may advance the cost of necessary premiums and keep benefits continually in force for the child. The advance may be entered as a judgment for unpaid child support in favor of the advancing party and against the obligated parent.

History: En. Sec. 11, Ch. 504, L. 1995.

40-5-812. Obligations of health benefit plan. (1) Upon receipt of a medical support order requiring a parent to provide coverage for a child, the administrator of a health benefit plan who receives the order shall accept the order as a valid authorization to enroll or provide benefits to the child. The health benefit plan may rely upon the face of the order and need not inquire as to its legal sufficiency.

(2) A plan administrator shall give the nonobligated parent, the department, whenever public assistance is paid to the child, or a third-party custodian

all notices and correspondence from the plan and allow them to freely communicate and interact with the plan in all respects regarding the child's benefits as fully and effectively as if done by the obligated parent.

(3) A copy of the medical support order must be accepted by the plan administrator as a request and application of the eligible obligated parent requesting that new or continued benefits, including continuation coverage available under COBRA, be provided for the child. As soon as practical and no later than 30 days after receipt of the order or upon the obligated parent obtaining eligibility, the child must be enrolled under the plan as an individual entitled to available benefits. Enrollment may not be delayed until an open enrollment period.

(4) If a plan is provided by an employer or other payor of income, the payor shall deduct the necessary premiums, if any, from the income of the obligated parent and remit the premiums to the plan as provided in 40-5-813.

(5) Within 30 days after receipt of a copy of a medical support order, the health benefit plan shall give written notice to both parents, to the department, and to any third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(6) If coverage is transferred to a different plan, within 30 days of transfer, the new plan shall provide written notice to both parents, to the department, whenever public assistance is paid for the child, or to the third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(7) A plan administrator may not terminate a child's coverage unless:

(a) written evidence shows that the medical support order is no longer in effect, that the child will be enrolled in another health benefit plan, or that individual insurance is provided;

(b) the employer, union, or other group eliminates coverage for all members or employees;

(c) the plan is available through the obligated parent's employer or other payor of income and the obligated parent's employment or right to receive income from the payor is terminated and continued coverage under COBRA is not available or the time for such coverage is expired; or

(d) the plan is available through the obligated parent's employer or other payor of income, the amount of the premium or the premium together with child support exceeds the limits in this section, and the other parent, the department, or the third-party custodian has not cured the insufficiency under 40-5-811.

History: En. Sec. 12, Ch. 504, L. 1995.

40-5-813. Obligation of payor. (1) Upon receipt of a medical support order, a payor providing a health benefit plan shall withhold from the obligated parent's income an amount equal to the required premium, if any, and apply the withheld amount to the plan premium, except that amounts withheld may not exceed the maximum amount permitted under the federal Consumer Credit

Protection Act. If the premium exceeds the maximum, the payor may not withhold the excess. If the premium, together with child support to be withheld, exceeds the maximum, child support has priority and the payor may not withhold the part of the premium that is in excess of the maximum.

(2) A medical support order has priority over garnishment of the income of the obligated parent for any purpose, except child support.

(3) (a) The payor shall continue withholding premiums when an obligated parent resumes employment following any break in service, layoff, leave of absence, or other similar circumstance.

(b) Upon the termination of employment, extended layoff, or any other break in service that causes coverage under a health benefit plan to cease, the payor shall immediately notify the other parent and the department or the third-party custodian, if either submitted the medical support order or submitted a written notice of interest to the plan.

(4) (a) A payor who is an employer may not discharge, refuse to employ, or take other disciplinary action against an obligated parent solely because of the issuance of a medical support order.

(b) The obligated parent has the burden of proving that the issuance of the medical support order was the sole reason for the employer's action.

(c) A payor knowingly violating this section is subject to the contempt powers of the tribunal issuing the medical support order. The tribunal may, in addition, impose a civil penalty of not more than $150.

History: En. Sec. 13, Ch. 504, L. 1995.

40-5-814. Obtaining information. Upon the request of either of the child's parents, the department, or a third-party custodian, a health benefit plan shall provide information about the child's health benefit coverage, including but not limited to:

(1) a description of the benefits and options available under the plan and summaries of the terms and costs of all plans and options for which the child is eligible;

(2) names and addresses of the employer, union, plan, or other entities involved in administering the plan;

(3) identification cards or other methods for access to coverage, including but not limited to numbers, codes, or other references applicable to the plan or to the group through which the child participates;

(4) claims received or paid on behalf of the child, including the dates and amounts of payments and the names and addresses of parties who have submitted claims or received payment for claims; and

(5) other information relevant to the preparation, submission, processing, or verification of claims.

History: En. Sec. 14, Ch. 504, L. 1995.

40-5-815. Paying claims. Payment for a medical claim assigned to the department must be to the department. If a medical claim is not assigned to the department and the claim is submitted by a parent or a third-party custodian, payment must be to the health service provider involved. Payment may be to the parent or third-party custodian submitting the claim if there is written evidence of prepayment to the health service provider by that parent or third-party custodian.

History: En. Sec. 15, Ch. 504, L. 1995.

40-5-816. Newborn children. A health benefit plan must provide the coverage required by 33-22-301 to a newborn child covered by this part.

History: En. Sec. 16, Ch. 504, L. 1995.

40-5-817. Adopted children — preexisting conditions. A health benefit plan shall provide the coverage required by 33-22-130 to a child placed for adoption.

History: En. Sec. 17, Ch. 504, L. 1995.

40-5-818. Nonexclusion — nondiscrimination by health benefit plan. A health benefit plan may not deny or limit enrollment of an obligated parent's child or discriminate against a child because:

(1) the child is not claimed as a dependent on the obligated parent's state or federal income tax return or considered as a dependent for tax purposes;

(2) the child was born out of wedlock;

(3) the child does not reside with the obligated parent;

(4) the child does not reside in the health plan's service area. A plan that provides medical care at particular locations or geographic areas shall also provide comparable benefits for a child whose residence or location is elsewhere.

(5) the natural child of the obligated parent has a preexisting condition, unless the plan does not provide for enrollment or provides only for limited enrollment of children with preexisting conditions.

History: En. Sec. 18, Ch. 504, L. 1995.

40-5-819. Medical assistance eligibility. A health benefit plan may not use information pertaining to medical assistance eligibility under Title XIX of the federal Social Security Act as a factor in enrolling a child in a plan or in making payments for benefits on behalf of the covered child. A health benefit plan may not impose any restrictions or requirements on recipients of medical assistance or the department different from those applicable to any other plan participant.

History: En. Sec. 19, Ch. 504, L. 1995.

40-5-820. Void health benefit plans. A health benefit plan provision that denies or restricts coverage for a child in violation of a provision of 40-5-815 through 40-5-818 is void as against public policy.

History: En. Sec. 20, Ch. 504, L. 1995.

40-5-821. Penalty imposed by tribunal. (1) In addition to any other penalty provided by this part or other law, a tribunal, after a hearing, may impose a civil penalty not to exceed $25 for each day that a parent, health benefit plan, employer, union, or other payor is found to have knowingly violated a medical support order or a provision of or a rule adopted under this part.

(2) The civil penalty must be deposited as provided in 40-5-813.

(3) Imposition of a civil penalty under this section may be appealed if the tribunal is a court or may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

History: En. Sec. 21, Ch. 504, L. 1995.

40-5-822. Duties of parents — consequences of noncompliance. (1) An obligated parent shall promptly execute and deliver to the provider of individual insurance, to a health benefit plan, or to another proper party all forms and instruments necessary to ensure the child's timely enrollment and continuous participation in any individual insurance or plan ordered by the medical support order. An obligated parent shall timely submit claims for processing, verification, and payment. Intentional delay or interference with enrollment or with the timely submission for processing, verification, and payment of a claim is punishable as provided in 40-5-821 and by an award of costs and attorney fees to an opposing party.

(2) An obligated parent shall provide the other parent, the department, and the third-party custodian with identification cards or other methods for access to coverage, including but not limited to numbers, codes, or other references applicable to the individual insurance, health benefit plan, or group through which the child receives coverage. Intentional delay or failure to provide information is punishable as provided in 40-5-821 and by an award of costs and attorney fees to an opposing party.

(3) If a party receives a reimbursement payment from individual insurance or from a health benefit plan but is not the party who has paid or is paying the underlying bill of the health service provider, the party receiving the payment shall promptly pay over the proceeds to the proper party. In addition to any applicable penalty for theft, conversion, civil contempt, or other wrongdoing, the amount of the payment may be entered as a judgment in favor of the proper party and against the party failing to promptly pay over the reimbursement.

(4) An obligated parent who defaults on a medical support order by failing to obtain individual insurance or a health benefit plan or who permits the individual insurance or plan coverage to lapse without securing a comparable replacement is liable for all of the child's medical expenses and shall indemnify the other parent, the department, or the third-party custodian for the cost of obtaining health benefit coverage and for all medical expenses of the child. The obligated parent may be relieved of liability by proving to the satisfaction of the tribunal that:

(a) no reasonable-cost or cost-beneficial individual insurance coverage or health benefit plan was available for the child during the period of time involved and the other parent, the department, or the third-party custodian has received notice of the nonavailability;

(b) the individual insurance coverage or plan ceased to be available for reasons wholly unrelated to the conduct of the obligated parent, replacement coverage has not been available, and timely written notice of the nonavailability has been given to the other parent, the department, or the third-party custodian; or

(c) the other parent or third-party custodian has obtained health coverage for the child and all parties have entered into an enforceable written agreement to share the costs of the coverage.

(5) An obligated parent who provides individual insurance coverage or a health benefit plan that is deficient under the requirements of the medical support order is liable, including liability by indemnification, for all of the

child's medical expenses that should have been covered but were not and for the cost to the other parent, the department, or the third-party custodian of obtaining coverage that complies with the order. The obligated parent may be relieved of liability by proving to the satisfaction of the tribunal that:

(a) the coverage provided for the child has been the best available during the periods of time involved and timely written notice regarding the coverage available was given to the other parent, the department, or the third-party custodian;

(b) benefits have been reduced for reasons wholly unrelated to the conduct of the obligated parent, better coverage has not been available, and timely written notice has been given to the other parent, the department, or the third-party custodian; or

(c) the other parent or the third-party custodian has obtained coverage for the child and all parties have entered into an enforceable written agreement to share the costs of the coverage.

(6) Any liability for medical costs and expenses incurred under this section may be entered as a judgment for unpaid support in favor of the party or agency paying the same and against the obligated parent.

(7) The consequences of noncompliance with a medical support order apply, to the extent possible, to a judgment, decree, or support order that requires a parent to obtain medical or health insurance coverage for a child or to pay for a child's medical care and that was entered:

(a) by a tribunal prior to enactment of this part; or

(b) by a court or administrative agency of competent jurisdiction in another state or territory.

History: En. Sec. 22, Ch. 504, L. 1995.

40-5-823. Health coverage — notice of intent to purchase. (1) The department or a court on request of the department may issue an order requiring the obligated parent to appear and show cause why an order should not be issued permitting the department to purchase individual insurance or health benefit plan coverage for the obligated parent's child and requiring recovery of the premium from the obligated parent if the tribunal finds that:

(a) a medical support obligation has been established by order of a tribunal;

(b) the obligated parent has become delinquent by failing to provide individual insurance or a health benefit plan or lets the individual insurance or health benefit plan lapse;

(c) there is no payor to whom an order of enrollment under 40-5-812 applies;

(d) the child is currently eligible for medical assistance benefits under Title XIX of the federal Social Security Act, as amended; and

(e) other individual insurance or a health benefit plan is available for the child and can be purchased at a reasonable cost.

(2) Prior to issuing or requesting an order to show cause, the department shall give the obligated parent notice of the intent to purchase coverage under this section and an opportunity to enroll the child in individual insurance or a health benefit plan within 30 days after notice is received by the obligated parent.

(3) If the obligated parent provides written proof within the 30 days after receipt of the notice that the child is enrolled in individual insurance or a health benefit plan, no further action may be taken by the department.

(4) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule upon the issues. The proceeding must be dismissed if the tribunal finds that the obligated parent has enrolled the child in individual insurance or a health benefit plan or that the individual insurance or plan that the department intends to purchase is not reasonable.

(5) A health benefit plan purchased under this section may be continued by the department until:

(a) the child is no longer eligible for medical assistance benefits;

(b) the obligated parent is no longer responsible under the law for the medical needs of the child; or

(c) the obligated parent provides written proof that the child has been enrolled in individual insurance or another adequate health benefit plan.

History: En. Sec. 23, Ch. 504, L. 1995.

40-5-824. Expedited enforcement procedures. (1) A parent, the department, or the third-party custodian may apply to the court for expedited enforcement procedures under this part. If the child receives medicaid, a parent or third-party custodian may apply to the department for and the department may on its own motion use expedited enforcement procedures under this part.

(2) Upon receipt of an application, the tribunal may issue an order requiring the obligated parent to appear and show cause why an order, penalty, fine, or any combination should not be determined, assessed, and entered under one or more provisions of this part. The obligated parent may appear at the hearing or submit an affidavit asserting the obligated parent's position and defense. The show cause order must be issued if the tribunal finds that:

(a) a medical support obligation has been established by order of a tribunal or by a court or administrative agency of another state, territory, or Indian reservation;

(b) the obligated parent is liable for medical costs and expenses or premium payments under this part;

(c) a parent receives a reimbursement payment from individual insurance or a health benefit plan and fails to promptly turn the payment over to the party who has paid or is paying the underlying bill of the health service provider;

(d) a parent is delinquent in paying to the other parent, the department, or a third-party custodian the parent's share of:

(i) copayments and deductibles required under the individual insurance or plan; or

(ii) costs and expenses not covered by individual insurance or a health benefit plan; or

(e) there are fines, penalties, or other financial sanctions that may be imposed under this part.

(3) Prior to applying for expedited enforcement, the applicant shall give the obligated parent notice of the claim under this part. The obligated parent may pay the claim within 30 days after receiving the notice. A copy of the notice must be given to the other parent, to the department, if the department is not

the applicant or the tribunal hearing the matter and if public assistance is paid for the child, or to the third-party custodian. The other parent, the department, or the third-party custodian may participate in the proceedings as a party.

(4) An application for expedited enforcement may be based on any credible statements or evidence presented to the tribunal, including the sworn affidavit of:

(a) a health care provider who has provided care or benefits for the child;

(b) an authorized representative of the department, the health benefit plan, or the individual insurer;

(c) either parent of the child; or

(d) the third-party custodian of the child.

(5) The order to show cause must inform the obligated parent and any other party of the party's right to respond by affidavit. An affidavit may include written proof of payment. A hearing must be scheduled within 15 days after the date of service of the order on the obligated parent. If an affidavit with written proof of payment is not received by the tribunal within 15 days and the obligated parent does not appear at the hearing, judgment may be entered for the relief requested. If an affidavit with written proof of payment is received but the obligated parent does not appear at the hearing, the tribunal may resolve the issues on the basis of credible documents and affidavits submitted.

(6) After issuing a show cause order and after opportunity for hearing, the tribunal shall promptly rule upon the issues. The proceeding must be dismissed if the tribunal finds written proof of payment of the liability and the amount of the liability is not contested by a party to the proceedings.

(7) If the tribunal finds the obligated parent liable, the tribunal shall enter the amount of the liability as an award against the liable parent. If requested to do so, the tribunal may make an award specifically in favor of a health care provider, health benefit plan, or individual insurer to the extent that an unsatisfied bill of the health care provider, health benefit plan, or individual insurer is part of the unsatisfied medical support liability involved. If the tribunal finds that the conduct, claim, or response of a party was frivolous or in bad faith, the tribunal may impose sanctions against the party including an award of costs and attorney fees.

(8) Awards under this section may be collected by any remedy available for the collection of delinquent child support, but claims for current or past-due child support have priority.

(9) An award under this section is a final order and may be appealed if the tribunal is a court or may be reviewed under Title 2, chapter 4, part 7, if the tribunal is the department.

History: En. Sec. 24, Ch. 504, L. 1995.

40-5-825. Rulemaking authority. The department may adopt rules to implement this part.

History: En. Sec. 25, Ch. 504, L. 1995.

CHAPTER 6

PARENT AND CHILD

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Chapter Cross-References

Tax provisions relating to families, 7-6-4405, 7-6-4408, 7-16-4105, 15-6-201 through 15-6-208, 15-7-307, 15-30-112, 15-30-113, 15-30-134.

Person's residence presumed to be that of his family for voting purposes, 13-1-112.

Beneficiaries under PERS, 19-2-801, 19-2-802.

Civil procedure provisions relating to family matters, 25-9-102, 27-19-306, 70-19-102, 70-27-111.

Execution of judgments when family property and interest involved, Title 25, ch. 13.

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

Parent or guardian may sue for injury or death of child or ward, 27-1-323, 27-1-512, 27-1-513.

When action not abated by death or other disability, 27-1-501, 27-1-511, 27-1-512.

U.C.C. provisions relating to families, 30-2-318, 30-9-109, 30-9-307.

Payment of unemployment compensation, 39-51-102, 39-51-201 through 39-51-206, 39-51-601, 39-51-2103, 39-51-2105, 39-51-2106, 39-51-2201, 39-51-2204, 39-51-2205, 39-51-2301 through 39-51-2307.

Workers' compensation law relating to families, Title 39, ch. 71, part 1; 39-71-602, 39-71-723, 39-71-737, 39-71-741, 39-71-742, 39-71-2203.

Rights of children, Title 41, ch. 1.

Child labor, Title 41, ch. 2.

General criminal provisions relating to family, 45-1-205, 45-2-101, 45-2-211.

Justifiable use of force with respect to children, 45-3-107.

Offenses against the person of a family member, 45-5-304, 45-5-507, 45-5-511, 45-5-602 through 45-5-604, 45-5-611, 45-5-612, 45-5-621 through 45-5-624, 50-20-104, 50-20-106 through 50-20-108.

Offenses against public order by family members, 45-8-113, 45-8-344.

Criminal procedure provisions relating to family members, 46-16-212, 46-23-1022, 46-23-1102.

Diagnostic tests for pregnant women and newborn infants, Title 50, ch. 19.

Day-care facilities, Title 52, ch. 2, part 7.

Payments for care of persons at institutions, Title 53, ch. 1, part 4.

General welfare provisions relating to family, 53-2-101, 53-2-201, 53-2-206, 53-2-610; Title 53, ch. 3.

Aid to Families With Dependent Children, Title 53, ch. 4, part 2.

Automobile registration may be transferred to surviving heir without letters of administration, 61-3-201.

Child safety restraint systems, 61-9-420.

Distribution of estate property, Title 72.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Housing Law of 1975, Title 90, ch. 6.

Part 1
Uniform Parentage Act

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Jurisdiction and venue, 41-3-103.

Responsibility of providing protective services, 41-3-302.

Priority of Youth Court hearings, 41-5-110.

Endangering the welfare of children, 45-5-622.

Department to accept custody of children committed by courts, 53-4-115.

Guardians of minors, Title 72, ch. 5, part 2.

40-6-101. Short title. This part may be cited as the "Uniform Parentage Act".

History: En. 61-301 by Sec. 1, Ch. 512, L. 1975; R.C.M. 1947, 61-301.

40-6-102. Definitions. As used in this part, the following definitions apply:

(1) "Blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. A blood test may include but is not limited to the human leukocyte antigen test and DNA probe technology.

(2) "Parent and child relationship" means the legal relationship existing between a child and the child's natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

(3) "Support judgment" or "support order" means an order, whether temporary or final, that provides for the periodic payment of an amount of money expressed in dollars for the support of a child, including medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child.

History: En. 61-302 by Sec. 2, Ch. 512, L. 1975; R.C.M. 1947, 61-302; amd. Sec. 6, Ch. 70, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 70 inserted definitions of blood test and support judgment or support order; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Effect of final decree of adoption, 40-8-125.

40-6-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

History: En. 61-303 by Sec. 3, Ch. 512, L. 1975; R.C.M. 1947, 61-303.

40-6-104. How parent and child relationship established. The parent and child relationship between a child and:

(1) the natural mother may be established by proof of her having given birth to the child or under this part;

(2) the natural father may be established under this part;

(3) an adoptive parent may be established by proof of adoption.

History: En. 61-304 by Sec. 4, Ch. 512, L. 1975; R.C.M. 1947, 61-304.

Cross-References

Effect of final decree of adoption, 40-8-125.

Certificate of adoption, 50-15-303.

40-6-105. Presumption of paternity. (1) A person is presumed to be the natural father of a child if any of the following occur:

(a) the person and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, the person and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, the person and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) the child's mother and the child's alleged father have acknowledged the alleged father's paternity of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed with the department of public health and human services or with the district court for the county where the person resides or for any county where the child support enforcement division of the department of public health and human services maintains a regional office;

(ii) with the person's consent, the person is named as the child's father on the child's birth certificate; or

(iii) the person is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, the person receives the child into the person's home and openly represents the child to be the person's natural child;

(e) the child's mother and the child's alleged father acknowledge the alleged father's paternity of the child in a paternity acknowledgment form that is provided by the department of public health and human services and filed with the department or with the district court of the county where the person resides or for any county where the child support enforcement division of the department of public health and human services maintains a regional office. The department of public health and human services or the district court shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of public health and human services shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity. If another person is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(f) the scientific evidence resulting from a blood test, whether ordered by a court or administrative agency of competent jurisdiction or agreed to by the parties, shows a 95% or higher statistical probability of paternity.

(2) An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(3) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

(4) A presumption of paternity established under this section is a sufficient basis for establishing a support order.

History: **En. 61-305 by Sec. 5, Ch. 512, L. 1975; R.C.M. 1947, 61-305; amd. Sec. 7, Ch. 70, L. 1995; amd. Sec. 80, Ch. 418, L. 1995; amd. Sec. 143, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendments — Composite Section: Chapter 70 at end of (1) inserted "any of the following occur"; at the beginning of (1)(c)(i) substituted "the child's mother and the child's alleged father have acknowledged the alleged father's paternity of the child in writing in accordance with subsection (1)(e) and the acknowledgment is filed" for "he has acknowledged his paternity in writing filed" and at end inserted "or for any county where the child support enforcement division of the department of social and rehabilitation services maintains a regional office"; at beginning of (1)(e) substituted "the child's mother and the child's alleged father acknowledge the alleged father's paternity of the child in a paternity acknowledgment form that is provided by the department of social and rehabilitation services and filed" for "he acknowledges his paternity of the child in a writing filed" and after "resides" substituted "or for any county where the child support enforcement division of the department of social and rehabilitation services maintains a regional office. The department of health and environmental sciences or the district court shall accept and file the completed form. As a part of a voluntary acknowledgment process, the department of social and rehabilitation services shall provide information to the parents regarding the rights and responsibilities of acknowledging paternity" for "which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed"; inserted (1)(f) concerning the scientific evidence resulting from a blood test; inserted (2) providing that an acknowledgment is binding on a parent who executes it whether or not the parent is a minor; inserted (4) providing that a presumption of paternity established under this section is a sufficient basis for establishing a support order; and made minor changes in style. Amendment effective July 1, 1995. Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner has substituted references to the Department of Public Health and Human Services for references to the Department of Social and Rehabilitation Services.

Chapter 418 in (1)(c)(i) and two places in (1)(e) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(c)(i) and (1)(e), in two places, substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Admissibility of paternity blood test from administrative paternity hearing, 40-5-234.

Effect of administrative order establishing paternity — state child support enforcement, 40-5-235.

Legitimacy of children born in wedlock, 40-6-201.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Child legitimized by marriage of parents, 40-6-203.

Birth certificates, Title 50, ch. 15, part 2.

40-6-106. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of the woman's husband, a wife is inseminated artificially with semen donated by a person who is not the husband, the husband is treated in law as if the husband were the natural father of a child conceived by artificial insemination. The husband's consent must be in writing and signed by the husband and the wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of public health and human services, where it must be kept confidential and in a sealed file. However, the physician's failure to file the consent does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if the donor is not the natural father of a child conceived by artificial insemination.

History: En. 61-306 by Sec. 6, Ch. 512, L. 1975; R.C.M. 1947, 61-306; amd. Sec. 81, Ch. 418, L. 1995; amd. Sec. 144, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in third sentence of (1) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1), in third sentence, substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifer chose the most appropriate.

Cross-References

Legitimacy of children born in wedlock, 40-6-201.

Vital statistics — duties of Department, 50-15-103.

40-6-107. Determination of father and child relationship — who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child, the department of public health and human services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has died, a person alleged or alleging to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings must be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

History: En. 61-307 by Sec. 7, Ch. 512, L. 1975; R.C.M. 1947, 61-307; amd. Sec. 32, Ch. 609, L. 1987; amd. Sec. 145, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of social and rehabilitation services or its appropriate local affiliate, the department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Depositions, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

Unborn children, 41-1-103.

Enforcement of minor's rights, 41-1-202.

Personal representative, Title 72, ch. 3, part 6.

40-6-108. Statute of limitations. (1) An action may be commenced at any time for the purpose of declaring the existence or nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1).

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if the other man has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105:

(a) may not be brought by the child later than 2 years after the child attains the age of majority;

(b) may be brought by a state agency at any time after the first application is made under Title IV-D of the Social Security Act for services to the child and before the child attains the age of majority. This subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a paternity action was barred or could have been barred by a shorter limitation period. However, in previously barred actions that are revived by this subsection, the father is not liable to the state agency for support of the child.

(4) The father's liability for a statutory debt created by the payment of public assistance is limited to the amount of assistance paid during the 2-year period preceding commencement of the action. This subsection does not limit the subsequent accrual of a statutory debt.

(5) Section 40-6-107 and this section do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(6) After the conclusion of an adoption proceeding under Title 40, chapter 8, a further action to declare the existence or nonexistence of the father and child relationship of the adopted child may not be commenced, except as provided in 40-8-112.

History: En. 61-308 by Sec. 8, Ch. 512, L. 1975; R.C.M. 1947, 61-308; amd. Sec. 5, Ch. 33, L. 1979; amd. Sec. 1, Ch. 442, L. 1985; amd. Sec. 1, Ch. 129, L. 1987; amd. Sec. 1, Ch. 265, L. 1991; amd. Sec. 1, Ch. 373, L. 1993.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

When person entitled to bring action is under a disability, 27-2-401.

Minors and adults defined, 41-1-101.

40-6-109. Jurisdiction — venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over an individual or the individual's guardian or conservator, if:

(a) the individual is personally served within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of the father's estate have been or could be commenced.

History: En. 61-309 by Sec. 9, Ch. 512, L. 1975; amd. Sec. 21, Ch. 33, L. 1977; R.C.M. 1947, 61-309; amd. Sec. 57, Ch. 328, L. 1993.

Cross-References

Residence — rules for determining, 1-1-215.

Venue in probate proceedings, 72-1-203.

40-6-110. Parties. The child must be made a party to the action. A minor must be represented by the minor's general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may not appoint the department of public health and human services or any of its staff as guardian ad litem for the child. The natural mother, each person presumed to be the father under 40-6-105, and each person alleged to be the natural father must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and must be given an opportunity to be heard. The court may align the parties.

History: En. 61-310 by Sec. 10, Ch. 512, L. 1975; R.C.M. 1947, 61-310; amd. Sec. 33, Ch. 609, L. 1987; amd. Sec. 3, Ch. 434, L. 1993; amd. Sec. 146, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in fourth sentence substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Infants or incompetent persons as parties, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Enforcement of minor's rights, 41-1-202.

Appointment of guardian ad litem, 41-5-512.

40-6-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

History: En. 61-311 by Sec. 11, Ch. 512, L. 1975; R.C.M. 1947, 61-311.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Subpoenas and enforcement — compelling testimony, 2-4-104.

Sittings of court — when private, 3-1-313.

Contempts, Title 3, ch. 1, part 5.

Perjury, 45-7-201.

40-6-112. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts.

History: En. 61-312 by Sec. 12, Ch. 512, L. 1975; R.C.M. 1947, 61-312.

Cross-References

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Opinions and expert testimony, Art. VII, M.R.Ev. (see Title 26, ch. 10).

40-6-113. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

History: En. 61-313 by Sec. 13, Ch. 512, L. 1975; R.C.M. 1947, 61-313.

Cross-References

Basis of opinion testimony by experts, Rule 703, M.R.Ev. (see Title 26, ch. 10).

Opinions on ultimate issue, Rule 704, M.R.Ev. (see Title 26, ch. 10).

40-6-114. Pretrial recommendations. (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, then the instant action shall be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

History: En. 61-314 by Sec. 14, Ch. 512, L. 1975; R.C.M. 1947, 61-314.

Cross-References

Guardian ad litem, 25-5-301.

Pretrial procedure — formulating issues, Rule 16, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Best interests of child, 40-4-212.

40-6-115. Civil action. (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified person at any time or by an identified person at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by the alleged father with respect to a person who is not subject to the jurisdiction of the court concerning sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of the alleged father's paternity of the child. A person who is identified and is subject to the jurisdiction of the court must be made a defendant in the action.

(4) If a blood test has been initially ordered under this part and a party objects to the blood test results, the objection must be filed within 20 days after service of the blood test results. If an objection is filed, the court shall order an additional blood test. If no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof

of authenticity or accuracy. This subsection does not limit the right of a party to contest the identity of persons submitting to testing.

(5) If the alleged father fails to answer or to appear at a scheduled hearing or for a scheduled blood test, the district court shall enter an order declaring the alleged father the legal father of the child. The district court may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of blood testing.

History: **En. 61-315 by Sec. 15, Ch. 512, L. 1975; R.C.M. 1947, 61-315; amd. Sec. 8, Ch. 70, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 70 inserted (4) concerning objection by a party and an additional blood test and admissibility of test results if no objection is made; inserted (5) providing that failure to answer or appear at a scheduled hearing or for a scheduled blood test results in declaring the alleged father the legal father of the child; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order, whether temporary or final, concerning child support and each modification of a judgment or order for child support must include a medical support order as defined in 40-5-804.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of public health and human services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(10) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

History: En. 61-316 by Sec. 16, Ch. 512, L. 1975; R.C.M. 1947, 61-316; amd. Sec. 2, Ch. 702, L. 1989; amd. Sec. 7, Ch. 266, L. 1991; amd. Sec. 2, Ch. 635, L. 1991; amd. Sec. 4, Ch. 294, L. 1993; amd. Sec. 21, Ch. 631, L. 1993; amd. Sec. 31, Ch. 504, L. 1995; amd. Sec. 147, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 504 in (7), after "or order", inserted "whether temporary or final" and after "include" substituted "a medical support order as defined in 40-5-804" for "a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation"; deleted former (10) that read: "(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (6)(a), (9), and (10) substituted "department of public health and human services" for "department of social and rehabilitation services"; and at beginning of (8)(b) deleted "After October 1, 1993". Amendment effective July 1, 1995.

Cross-References

Property exempt from execution — earnings of judgment debtor, 25-13-614.

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Necessity determined by standard of living, 40-2-210.

Child support, 40-4-204.

Best interest of child, 40-4-212.

Visitation, 40-4-217.

Enforcement of support, Title 40, ch. 5.

Obligations of parents for the support and education of their children, 40-6-211.

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Full faith and credit must be given to a determination of paternity made by any other state, whether presumed by law, established through voluntary acknowledgment, or established by administrative or judicial processes.

(3) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(4) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (4)(a) is subject to the requirements of subsection (4)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

History: En. 61-318 by Sec. 18, Ch. 512, L. 1975; R.C.M. 1947, 61-318; amd. Sec. 22, Ch. 631, L. 1993; amd. Sec. 9, Ch. 70, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 70 inserted (2) providing that full faith and credit be given to a determination of paternity made by any other state; and adjusted subsection references. Amendment effective July 1, 1995.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Judgments — method of enforcement, Title 25, ch. 13, part 2.

Enforcement of order to pay money, 25-13-204.

Remedies, Title 27.

Payment of maintenance or support to court, 40-4-206.

40-6-118. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order:

(1) for future education and support; and

(2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117(3), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under 40-6-116(4) may specify that the judgment or order may not be modified or revoked.

History: **En. 61-319 by Sec. 19, Ch. 512, L. 1975; R.C.M. 1947, 61-319; amd. Sec. 10, Ch. 70, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 70 in (2) substituted "40-6-117(3)" for "40-6-117(2)". Amendment effective July 1, 1995.

Cross-References

Child support, 40-4-204.

Modification and termination of provisions for maintenance, support, and property disposition, 40-4-208.

Obligations of parents for the support and education of their children, 40-6-211.

40-6-119. Right to counsel — payment of counsel fees and costs — free transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) The court may order reasonable fees of counsel, experts, and the child's guardian ad litem and other costs of the action and pretrial proceedings, including blood test costs, to be paid by the parties in proportions and at times determined by the court.

(3) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: **En. 61-320 by Sec. 20, Ch. 512, L. 1975; R.C.M. 1947, 61-320; amd. Sec. 1, Ch. 282, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 282 inserted (2) providing for the payment of counsel fees and costs, including blood test costs, in a paternity action; and made minor changes in style.

Applicability: Section 2, Ch. 282, L. 1995, provided: "[This act] [40-6-119] applies to actions filed after [the effective date of this act] [effective October 1, 1995]."

Cross-References

Right to counsel, Art. II, sec. 24, Mont. Const.

Copies of proceedings, 3-5-604.

40-6-120. Hearings and records — confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this part shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: **En. 61-321 by Sec. 21, Ch. 512, L. 1975; R.C.M. 1947, 61-321.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Sittings of court — when private, 3-1-313.

40-6-121. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

History: **En. 61-322 by Sec. 22, Ch. 512, L. 1975; R.C.M. 1947, 61-322.**

40-6-122. Promise to render support. (1) Any promise in writing to furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 40-6-107(4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and

designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: En. 61-323 by Sec. 23, Ch. 512, L. 1975; amd. Sec. 22, Ch. 33, L. 1977; R.C.M. 1947, 61-323.

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

Consideration, Title 28, ch. 2, part 8.

Best interest of child, 40-4-212.

40-6-123. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of public health and human services shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth may not be ascertainable from the new certificate, but the actual place and date of birth must be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate must be kept in a sealed and confidential file and are subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-324 by Sec. 24, Ch. 512, L. 1975; R.C.M. 1947, 61-324; amd. Sec. 82, Ch. 418, L. 1995; amd. Sec. 148, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Child of unknown parentage, 50-15-203.

Delayed or amended birth certificate, 50-15-204.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-124. Repealed. Sec. 15, Ch. 530, L. 1981.

History: En. 61-328 by Sec. 1, Ch. 422, L. 1977; R.C.M. 1947, 61-328.

40-6-125. Children born out of wedlock — relinquishment — consent. (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a relinquishment, in accordance with 40-6-135(2) through (5), terminating the mother's rights to the child. If the mother relinquishes the child, the agency of the state of Montana, a licensed adoption agency, or the person to whom the child is relinquished may file a petition under this part or a petition of neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, the mother's execution of a relinquishment must be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated the father's rights under this part.

History: En. 61-329 by Sec. 2, Ch. 422, L. 1977; R.C.M. 1947, 61-329; amd. Sec. 4, Ch. 530, L. 1981; amd. Sec. 2, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 683, L. 1991; amd. Sec. 3, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (2), near end of second sentence after "or a petition of", deleted "dependency or"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Consent required for adoption, 40-8-111.

Effect of final decree of adoption, 40-8-125.

40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice must be prescribed by the director of the department of public health and human services and supplied to the clerks of the district courts. The notice must include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of public health and human services. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 is presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. The notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. The notice creates a rebuttable presumption as to paternity of the child for purposes of a neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate the person's paternal rights to the child.

History: En. 61-330 by Sec. 3, Ch. 422, L. 1977; R.C.M. 1947, 61-330; amd. Sec. 83, Ch. 418, L. 1995; amd. Sec. 4, Ch. 458, L. 1995; amd. Sec. 149, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 in (1), in two places, substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 458 in (2), near end after "for purposes of a", deleted "dependency or"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (1), in two places, substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Definition and examples of disputable presumptions, 26-1-602.

Presumptions, Art. III, M.R.Ev. (see Title 26, ch. 10).

Certificates, 50-15-109.

40-6-127. Expected child — intent to release or consent — petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana Rules of Civil Procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 40-6-126 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 40-6-126(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 40-6-126(3) and constitutes a denial of his interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

History: **En. 61-331 by Sec. 4, Ch. 422, L. 1977; R.C.M. 1947, 61-331.**

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Adoption of children, Title 40, ch. 8, part 1.

Certificates, 50-15-109.

40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating the mother's rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release must be filed with the court, or the putative father's verified acknowledgment of notice of intent to release must be filed with the court if the notice was given to the putative father.

The court shall request the records and statistics bureau of the department of public health and human services to send to the court a copy of any notice of intent to claim paternity of the particular child. The records and statistics bureau shall send the court a copy of any notice that it has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry must include the following:

(a) whether the mother was married at the time of conception of the child or at any time after conception;

(b) whether the mother was cohabiting with a person of the opposite sex at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with the pregnancy; or

(d) whether any person has formally or informally acknowledged or declared the person's possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of the mother's right to privacy, a mother of a child who is the subject of proceedings under this part may not be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing must be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner that the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other person who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing must inform the putative father that failure to appear at the hearing constitutes a denial of the putative father's interest in custody of the child, which denial will result in the court's termination of the putative father's rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) must be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing is not required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If a person has not been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in the publication only with the mother's written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived the right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

History: En. 61-332 by Sec. 5, Ch. 422, L. 1977; R.C.M. 1947, 61-332; amd. Sec. 84, Ch. 418, L. 1995; amd. Sec. 150, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 418 in (2), in second sentence, substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Legitimacy of children born in wedlock, 40-6-201.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Effect of final decree, 40-8-125.

Certificates, 50-15-109.

40-6-129. Grounds for termination of father's rights. (1) If the court has proof that the person whom it determines pursuant to 40-6-128 to be the father of the child was timely served with notice of intent to release pursuant to 40-6-127 or was served with or waived the notice of hearing required by 40-6-128(5), the court may permanently terminate the rights of the putative father if the putative father:

(a) submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child.

(c) was served with a notice of intent to release in accordance with 40-6-127(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) is given proper notice of hearing in accordance with subsection (5) or (7) of 40-6-128 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitalization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 40-6-128.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

History: En. 61-333 by Sec. 6, Ch. 422, L. 1977; R.C.M. 1947, 61-333.

Cross-References

Presumption of paternity, 40-6-105.

40-6-130. Best interests of the child — custody to father — legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to whom the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this part or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

History: En. 61-334 by Sec. 7, Ch. 422, L. 1977; R.C.M. 1947, 61-334.

Cross-References

Best interest of child, 40-4-212.

Child adoption agencies, Title 52, ch. 2, part 4.

40-6-131. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. 61-327 by Sec. 29, Ch. 512, L. 1975; R.C.M. 1947, 61-327.

40-6-132. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 1, Ch. 530, L. 1981.

40-6-133. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 2, Ch. 530, L. 1981.

40-6-134. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 3, Ch. 530, L. 1981.

40-6-135. Relinquishment of parental rights — form, execution, and revocation. (1) A parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquished to the department of public health and human services, a licensed adoption agency, or the prospective adoptive parents. A parent may not execute a relinquishment to the department or a licensed adoption agency unless the department or the agency has agreed to accept custody of the child until the child is adopted.

(2) A relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

(3) Except as otherwise provided in this section, a relinquishment must be by a separate instrument executed before a notary public.

(4) If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

(5) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(6) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated and if the department of public health and human services or a licensed adoption agency has agreed to accept custody of the child until the child is adopted, the court shall issue an order committing the child to the department or to the licensed adoption agency to which the relinquishment was given.

(7) Entry of an order terminating the rights of both parents pursuant to subsection (6) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(8) Upon petition of a person who executed a relinquishment and of the department of public health and human services or the licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition must be made.

History: En. Sec. 1, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 225, L. 1987; amd. Sec. 2, Ch. 683, L. 1991; amd. Sec. 151, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), (6), and (8) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Cross-References

Officers who may administer oaths, 1-6-101.

Reporter's report prima facie evidence, 3-5-612.

Jurisdiction — child custody proceedings, 40-4-211.

Minor parent, 40-8-105.

Consent required for adoption, 40-8-111.

Withdrawal of consent, 40-8-112.

Effect of final decree of adoption, 40-8-125.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Child adoption agencies, Title 52, ch. 2, part 4.

Part 2
Obligations of Parents

Part Cross-References

Mandatory child safety restraint systems, 61-9-419 through 61-9-423.

40-6-201. Legitimacy of children born in wedlock. All children born in wedlock are presumed to be legitimate.

History: En. Sec. 280, Civ. C. 1895; re-en. Sec. 3738, Rev. C. 1907; re-en. Sec. 5830, R.C.M. 1921; Cal. Civ. C. Sec. 193; Field Civ. C. Sec. 86; re-en. Sec. 5830, R.C.M. 1935; R.C.M. 1947, 61-101.

Cross-References

Presumption of legitimacy, 26-1-602.

Presumptions, Art. III, M.R.Ev. (see Title 26, ch. 10).

Birth — vital statistics, Title 50, ch. 15, part 2.

40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of her marriage, are presumed to be legitimate children of that marriage.

History: En. Sec. 281, Civ. C. 1895; re-en. Sec. 3739, Rev. C. 1907; re-en. Sec. 5831, R.C.M. 1921; Cal. Civ. C. Sec. 194; Based on Field Civ. C. Sec. 87; re-en. Sec. 5831, R.C.M. 1935; R.C.M. 1947, 61-102.

Cross-References

Complete list of conclusive presumptions, 26-1-601.

Presumption of legitimacy, 26-1-602.

Birth — vital statistics, Title 50, ch. 15, part 2.

40-6-203. Child legitimatized by marriage of parents. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

History: En. Sec. 11, p. 410, Bannack Stat.; re-en. Sec. 11, p. 521, Cod. Stat. 1871; re-en. Sec. 864, 5th Div. Rev. Stat. 1879; re-en. Sec. 1425, 5th Div. Comp. Stat. 1887; amd. Sec. 302, Civ. C. 1895; re-en. Sec. 3760, Rev. C. 1907; re-en. Sec. 5852, R.C.M. 1921; Cal. Civ. C. Sec. 215; re-en. Sec. 5852, R.C.M. 1935; R.C.M. 1947, 61-123.

Cross-References

Form of application, license, marriage certificate, and consent — names of children included, 40-1-107.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-204 through 40-6-210 reserved.

40-6-211. Obligations of parents for the support and education of their children. The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances.

History: En. Sec. 283, Civ. C. 1895; re-en. Sec. 3741, Rev. C. 1907; re-en. Sec. 5833, R.C.M. 1921; Cal. Civ. C. Sec. 196; Field Civ. C. Sec. 89; re-en. Sec. 5833, R.C.M. 1935; amd. Sec. 21, Ch. 293, L. 1975; R.C.M. 1947, 61-104.

Cross-References

Earnings and accumulations of married persons, 40-2-205.

Earnings and accumulations when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-6-212. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child out of the child's property for the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for the child's benefit.

History: En. Sec. 288, Civ. C. 1895; re-en. Sec. 3746, Rev. C. 1907; re-en. Sec. 5838, R.C.M. 1921; Cal. Civ. C. Sec. 201; Field Civ. C. Sec. 92; re-en. Sec. 5838, R.C.M. 1935; amd. Sec. 14, Ch. 33, L. 1977; R.C.M. 1947, 61-109.

Cross-References

Duty of child to support indigent parents, 40-6-301.

40-6-213. Remedy when parent dies without providing for support of child. If a parent chargeable with the support of a child dies leaving the child chargeable to the county and leaving an estate sufficient for the child's support, the county commissioners of the county may claim provision for the child's support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against that estate and against the heirs, devisees, and the next of kin of the parent.

History: En. Sec. 292, Civ. C. 1895; re-en. Sec. 3750, Rev. C. 1907; re-en. Sec. 5842, R.C.M. 1921; Cal. Civ. C. Sec. 205; Based on Field Civ. C. Sec. 96; re-en. Sec. 5842, R.C.M. 1935; amd. Sec. 15, Ch. 33, L. 1977; R.C.M. 1947, 61-113.

Cross-References

Child support, 40-4-204.

Modification and termination of support, 40-4-208.

Estates — creditors' claims, Title 72, ch. 3, part 8.

40-6-214. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

History: En. Sec. 293, Civ. C. 1895; re-en. Sec. 3751, Rev. C. 1907; re-en. Sec. 5843, R.C.M. 1921; Cal. Civ. C. Sec. 206; Field Civ. C. Sec. 97; re-en. Sec. 5843, R.C.M. 1935; R.C.M. 1947, 61-114.

Cross-References

Earnings and accumulations of married person, 40-2-205.

Earnings and accumulations of married person when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Duty of child to support indigent parents, 40-6-301.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-215. When parent liable for necessaries supplied to child. If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

History: En. Sec. 294, Civ. C. 1895; re-en. Sec. 3752, Rev. C. 1907; re-en. Sec. 5844, R.C.M. 1921; Cal. Civ. C. Sec. 207; Field Civ. C. Sec. 98; re-en. Sec. 5844, R.C.M. 1935; R.C.M. 1947, 61-115.

Cross-References

Earnings and accumulations of married person, 40-2-205.

Earnings and accumulations of married person when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-6-216. When parent not liable for support furnished child. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child, without an agreement for compensation, or to compensate a stranger for the support of a child who has abandoned the parent without just cause.

History: En. Sec. 295, Civ. C. 1895; re-en. Sec. 3753, Rev. C. 1907; re-en. Sec. 5845, R.C.M. 1921; Cal. Civ. C. Sec. 208; Field Civ. C. Sec. 99; re-en. Sec. 5845, R.C.M. 1935; R.C.M. 1947, 61-116.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-217. Married person not bound for support of spouse's children by former marriage. A married person is not bound to support his spouse's children by a former marriage; but if he receives them into his family and supports them, it is presumed that he does so as a parent and, where such is the case, they are not liable to him for their support nor he to them for their services.

History: En. Sec. 296, Civ. C. 1895; re-en. Sec. 3754, Rev. C. 1907; re-en. Sec. 5846, R.C.M. 1921; Cal. Civ. C. Sec. 209; Field Civ. C. Sec. 100; re-en. Sec. 5846, R.C.M. 1935; amd. Sec. 22, Ch. 293, L. 1975; R.C.M. 1947, 61-117.

Cross-References

Debts of spouse contracted before marriage, 40-2-208.

40-6-218. Compensation and support of person after attaining majority. Where a person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

History: En. Sec. 297, Civ. C. 1895; re-en. Sec. 3755, Rev. C. 1907; re-en. Sec. 5847, R.C.M. 1921; Cal. Civ. C. Sec. 210; Field Civ. C. Sec. 101; re-en. Sec. 5847, R.C.M. 1935; amd. Sec. 16, Ch. 33, L. 1977; R.C.M. 1947, 61-118.

Cross-References

Minors and adults defined, 41-1-101.

40-6-219 and 40-6-220 reserved.

40-6-221. Custody, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child, unless custody is determined otherwise pursuant to 40-4-221.

History: En. Sec. 284, Civ. C. 1895; re-en. Sec. 3742, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1915; re-en. Sec. 5834, R.C.M. 1921; Cal. Civ. C. Sec. 197; Based on Field Civ. C. Sec. 90; re-en. Sec. 5834, R.C.M. 1935; amd. Sec. 26, Ch. 512, L. 1975; amd. Sec. 13, Ch. 33, L. 1977; R.C.M. 1947, 61-105; amd. Sec. 5, Ch. 127, L. 1979.

Cross-References
Best interest of child, 40-4-212.
Minor cannot disaffirm contract for necessaries, 41-1-305.
Child labor, Title 41, ch. 2.

40-6-222. Custody of children where husband and wife living separate. The husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage while such husband and wife live separate and apart from each other.

History: En. Sec. 285, Civ. C. 1895; re-en. Sec. 3743, Rev. C. 1907; re-en. Sec. 5835, R.C.M. 1921; Cal. Civ. C. Sec. 198; re-en. Sec. 5835, R.C.M. 1935; R.C.M. 1947, 61-106.

Cross-References
Earnings and accumulations of married person — when separated, 40-2-206.

40-6-223. When parent may bring action for the exclusive control of children — decree. Without application for divorce, the husband or wife may bring an action for the exclusive control of the children of the marriage, and the court or judge may, during the pendency of such action or at the final hearing thereof or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interests of the children and may at any time thereafter amend, vary, or modify such order or decree as the natural rights and the interests of the parties, including the children, may require.

History: En. Sec. 286, Civ. C. 1895; re-en. Sec. 3744, Rev. C. 1907; re-en. Sec. 5836, R.C.M. 1921; Cal. Civ. C. Sec. 199; re-en. Sec. 5836, R.C.M. 1935; R.C.M. 1947, 61-107.

Cross-References
Necessity determined by standard of living, 40-2-210.
Alteration of legal relation by contract — separation agreement, 40-2-303.
Temporary order or temporary injunction, 40-4-121.
Best interest of child, 40-4-212.
Temporary orders, 40-4-213.
Modification of custody, 40-4-219.

40-6-224. When custody may be awarded without dissolution proceedings. When a husband and wife live in a state of separation without the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either for such time and under such regulations as the case may require.

History: En. Sec. 301, Civ. C. 1895; re-en. Sec. 3759, Rev. C. 1907; re-en. Sec. 5851, R.C.M. 1921; Cal. Civ. C. Sec. 214; Field Civ. C. Sec. 106; re-en. Sec. 5851, R.C.M. 1935; amd. Sec. 17, Ch. 33, L. 1977; R.C.M. 1947, 61-122.

Cross-References
Legal separation, 40-4-104.
Temporary order or temporary injunction, 40-4-121.
Separation agreement, 40-4-201.
Temporary custody orders, 40-4-213.

40-6-225 through 40-6-230 reserved.

40-6-231. Right of parent to determine the residence of child. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

History: En. Sec. 300, Civ. C. 1895; re-en. Sec. 3758, Rev. C. 1907; re-en. Sec. 5850, R.C.M. 1921; Cal. Civ. C. Sec. 213; Field Civ. C. Sec. 104; re-en. Sec. 5850, R.C.M. 1935; R.C.M. 1947, 61-121.

Cross-References

Residence — rules for determining, 1-1-215.

Best interest of child, 40-4-212.

40-6-232. Parental control over property of child. The parent, as such, has no control over the property of the child.

History: En. Sec. 289, Civ. C. 1895; re-en. Sec. 3747, Rev. C. 1907; re-en. Sec. 5839, R.C.M. 1921; Cal. Civ. C. Sec. 202; Field Civ. C. Sec. 93; re-en. Sec. 5839, R.C.M. 1935; R.C.M. 1947, 61-110.

Cross-References

Enforcement of minor's rights, 41-1-202.

Delegation of power by minors forbidden, 41-1-301.

40-6-233. Remedy for parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced. A parent or guardian of a child has the right to give the child medicine prescribed for the child, and exercise of the right is not an abuse of parental authority.

History: En. Sec. 290, Civ. C. 1895; re-en. Sec. 3748, Rev. C. 1907; re-en. Sec. 5840, R.C.M. 1921; Cal. Civ. C. Sec. 203; Based on Field Civ. C. Sec. 94; re-en. Sec. 5840, R.C.M. 1935; R.C.M. 1947, 61-111; amd. Sec. 1, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 528 inserted last sentence relating to the giving of prescribed medicine to a child.

Cross-References

Child abuse, neglect, and dependency, Title 41, ch. 3.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

40-6-234. When parental authority ceases. The authority of the parent ceases:

(1) upon the appointment, by a court, of a guardian of the person of a child;
(2) upon the marriage of a child; or
(3) upon its attaining majority.

History: En. Sec. 291, Civ. C. 1895; re-en. Sec. 3749, Rev. C. 1907; re-en. Sec. 5841, R.C.M. 1921; Cal. Civ. C. Sec. 204; Field Civ. C. Sec. 95; re-en. Sec. 5841, R.C.M. 1935; R.C.M. 1947, 61-112.

Cross-References

Marriage, Title 40, ch. 1.

Best interest of child, 40-4-212.

Effect of final decree, 40-8-125.

Minors and adults defined, 41-1-101.

Dispositional hearing — abuse, neglect, and dependency, 41-3-406.

Limited emancipation at age 16, 41-3-408.

Guardians of minors, Title 72, ch. 5, part 2.

40-6-235. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

History: En. Sec. 298, Civ. C. 1895; re-en. Sec. 3756, Rev. C. 1907; re-en. Sec. 5848, R.C.M. 1921; Cal. Civ. C. Sec. 211; Field Civ. C. Sec. 102; re-en. Sec. 5848, R.C.M. 1935; R.C.M. 1947, 61-119.

Cross-References

Children born out of wedlock — relinquishment — consent, 40-6-125.

Relinquishment of parental rights, 40-6-135.

Service of summons — how abandonment established, 41-5-503.

Endangering the welfare of children, 45-5-622.

40-6-236. Wages of minors. The wages of a minor employed in service may be paid him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

History: En. Sec. 299, Civ. C. 1895; re-en. Sec. 3757, Rev. C. 1907; re-en. Sec. 5849, R.C.M. 1921; Cal. Civ. C. Sec. 212; Based on Field Civ. C. Sec. 103; re-en. Sec. 5849, R.C.M. 1935; R.C.M. 1947, 61-120.

Cross-References

Payment of wages generally, 39-3-204.

Child labor, Title 41, ch. 2, part 1.

40-6-237. Destruction of property by minor — liability of parents. Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed $2,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1; amd. Sec. 1, Ch. 560, L. 1981.

Cross-References

Duties and sanctions — suspension and expulsion of pupils, 20-5-201.

Youth Court Act — purpose, 41-5-102.

Criminal mischief, 45-6-101.

Application of minors for drivers' licenses, 61-5-108.

40-6-238. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed $2,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed $100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971; amd. Sec. 2, Ch. 227, L. 1977; R.C.M. 1947, 61-112.2; amd. Sec. 2, Ch. 560, L. 1981.

Cross-References

Duties and sanctions — suspension and expulsion of pupils, 20-5-201.

Attorneys' fees, Title 25, ch. 10, part 3.

Right to compensatory damages, 27-1-202.

Damages to be reasonable, 27-1-302.

Part 3
Obligations of Children

40-6-301. Duty of child to support indigent parents. (1) It is the duty of every adult child, having the financial ability, to furnish and provide necessary food, clothing, shelter, medical attendance, and burial, entombment, or cremation costs for an indigent parent, unless, in the judgment of the court or jury, the child is excused by reason of intemperance, indolence, immorality, or profligacy of the parent.

(2) If a county pays for burial, entombment, or cremation costs under 53-2-804, the county may seek reimbursement under this part, if applicable.

History: En. Sec. 1, Ch. 42, L. 1915; re-en. Sec. 5853, R.C.M. 1921; re-en. Sec. 5853, R.C.M. 1935; R.C.M. 1947, 61-124; amd. Sec. 1, Ch. 435, L. 1993.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-302. Failure to support — misdemeanor. Any person violating the provisions of 40-6-301 shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 42, L. 1915; re-en. Sec. 5854, R.C.M. 1921; re-en. Sec. 5854, R.C.M. 1935; R.C.M. 1947, 61-125.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Nonsupport, 45-5-621.

40-6-303. Civil action to enforce duty to support. A civil suit may be instituted and maintained for the enforcement of the provisions of 40-6-301 by any such child, where there is more than one adult child, or by the parent to whom such support is due or by the county attorney, and in case there is more than one such child, the court or the jury upon the hearing is authorized and empowered to apportion the expenses of such support between the adult children, and the court shall enter judgment in accordance with such finding and apportionment; provided, that such civil action shall not be construed as barring the arrest and conviction of such person for misdemeanor.

History: En. Sec. 3, Ch. 42, L. 1915; re-en. Sec. 5855, R.C.M. 1921; re-en. Sec. 5855, R.C.M. 1935; R.C.M. 1947, 61-126.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

CHAPTER 7

UNIFORM CHILD CUSTODY JURISDICTION ACT

Part 1 — Uniform Child Custody Jurisdiction Act

40-7-101. Short title.
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40-7-118. Certified copies of custody decree.
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40-7-121. Assistance to courts of other states.
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40-7-123. Request for court records of another state.
40-7-124. International application.
40-7-125. Priority.

Part 1

Uniform Child Custody Jurisdiction Act

Part Cross-References

Custody jurisdiction, 40-4-211.

Custodial interference, 45-5-304.

40-7-101. Short title. This chapter may be cited as the “Uniform Child Custody Jurisdiction Act”.

History: En. 61-401 by Sec. 1, Ch. 537, L. 1977; R.C.M. 1947, 61-401.

40-7-102. Purpose — construction. (1) The general purposes of this chapter are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This chapter shall be construed to promote the general purposes stated in this section.

History: En. 61-402 by Sec. 2, Ch. 537, L. 1977; R.C.M. 1947, 61-402.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Custodial interference, 45-5-304.

40-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 41, chapter 3 or 5.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

History: En. 61-403 by Sec. 3, Ch. 537, L. 1977; R.C.M. 1947, 61-403.

40-7-104. Jurisdiction. The jurisdictional provisions of 40-4-211 apply to this chapter.

History: En. 61-404 by Sec. 4, Ch. 537, L. 1977; R.C.M. 1947, 61-404.

40-7-105. Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 40-7-106.

History: En. 61-405 by Sec. 5, Ch. 537, L. 1977; R.C.M. 1947, 61-405.

Cross-References

Jurisdiction — commencement of proceedings — child custody, 40-4-211.

Modification of custody, 40-4-219.

40-7-106. Notice to persons outside this state — submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History: En. 61-406 by Sec. 6, Ch. 537, L. 1977; R.C.M. 1947, 61-406.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Proof of service, Rule 4D(8), M.R.Civ.P. (see Title 25, ch. 20).

Jurisdiction — commencement of proceedings — child custody, 40-4-211.

40-7-107. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under 40-7-110 and shall consult the child custody registry established under 40-7-117 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 40-7-120 through 40-7-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

History: **En. 61-407 by Sec. 7, Ch. 537, L. 1977; R.C.M. 1947, 61-407.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Jurisdiction — commencement of proceedings, 40-4-211.

40-7-108. Inconvenient forum. (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 40-7-102.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known,

transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

History: En. 61-408 by Sec. 8, Ch. 537, L. 1977; R.C.M. 1947, 61-408.

Cross-References

Change of venue, Title 25, ch. 2, part 2.
Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Effect of other judicial orders — when disputable presumption created, 26-3-202.
Hearings in custody proceedings, 40-4-216.

40-7-109. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

History: En. 61-409 by Sec. 9, Ch. 537, L. 1977; R.C.M. 1947, 61-409.

Cross-References

Costs, Title 25, ch. 10, parts 1 and 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Best interests of child, 40-4-212, 40-6-130.
Custody modification, 40-4-219.
Custodial interference, 45-5-304.

40-7-110. Information under oath to be submitted to the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court.

The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History: **En. 61-410 by Sec. 10, Ch. 537, L. 1977; R.C.M. 1947, 61-410.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Jurisdiction — commencement of custody proceedings, 40-4-211.

Affidavit practice, 40-4-220.

40-7-111. Additional parties. If the court learns from information furnished by the parties pursuant to 40-7-110 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with 40-7-106.

History: **En. 61-411 by Sec. 11, Ch. 537, L. 1977; R.C.M. 1947, 61-411.**

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

40-7-112. Appearance of parties and child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under 40-7-106 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

History: **En. 61-412 by Sec. 12, Ch. 537, L. 1977; R.C.M. 1947, 61-412.**

Cross-References

Hearings, custody proceedings, 40-4-216.

40-7-113. Legal effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under 40-7-104 binds all parties who have been served in this state or notified in accordance with 40-7-106 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

History: En. 61-413 by Sec. 13, Ch. 537, L. 1977; R.C.M. 1947, 61-413.

Cross-References

Decree of dissolution of marriage, 40-4-108.

Separation agreement, 40-4-201.

Modification of custody, 40-4-219.

40-7-114. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

History: En. 61-414 by Sec. 14, Ch. 537, L. 1977; R.C.M. 1947, 61-414.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-7-115. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and 40-7-109 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with 40-7-123.

History: En. 61-415 by Sec. 15, Ch. 537, L. 1977; R.C.M. 1947, 61-415.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Modification of custody, 40-4-219.

40-7-116. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

History: En. 61-416 by Sec. 16, Ch. 537, L. 1977; R.C.M. 1947, 61-416.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Effect of judicial record of another state, 26-3-203.

Judicial supervision, 40-4-218.

40-7-117. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History: En. 61-417 by Sec. 17, Ch. 537, L. 1977; R.C.M. 1947, 61-417.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Register of actions, 3-5-504.

40-7-118. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

History: En. 61-418 by Sec. 18, Ch. 537, L. 1977; R.C.M. 1947, 61-418.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

40-7-119. Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

History: En. 61-419 by Sec. 19, Ch. 537, L. 1977; R.C.M. 1947, 61-419.

Cross-References

Depositions, Rules 26 through 31, M.R.Civ.P. (see Title 25, ch. 20).

Powers and duties of guardian of minor, 72-5-231.

40-7-120. Hearings and studies in another state — orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

History: En. 61-420 by Sec. 20, Ch. 537, L. 1977; R.C.M. 1947, 61-420.

Cross-References

Costs, Title 25, ch. 10.

Effect of judicial record of another state, 26-3-203.

Investigations and reports, 40-4-215.

Hearings, 40-4-216.

40-7-121. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

History: En. 61-421 by Sec. 21, Ch. 537, L. 1977; R.C.M. 1947, 61-421.

Cross-References

Copies of proceedings, 3-5-604.

Costs, Title 25, ch. 10.

Depositions, Rules 26 through 31, M.R.Civ.P. (see Title 25, ch. 20).

Investigations and reports, 40-4-215.

40-7-122. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

History: En. 61-422 by Sec. 22, Ch. 537, L. 1977; R.C.M. 1947, 61-422.

Cross-References

Copies of proceedings, 3-5-604.

Investigations and reports, 40-4-215.

Affidavit practice, 40-4-220.

40-7-123. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in 40-7-122.

History: En. 61-423 by Sec. 23, Ch. 537, L. 1977; R.C.M. 1947, 61-423.

Cross-References

Copies of proceedings, 3-5-604.

Effect of judicial record of another state, 26-3-203.

40-7-124. International application. The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

History: En. 61-424 by Sec. 24, Ch. 537, L. 1977; R.C.M. 1947, 61-424.

Cross-References

Effect of judgments of other foreign tribunals, 26-3-205.

40-7-125. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this chapter shall be given calendar priority and handled expeditiously.

History: En. 61-425 by Sec. 25, Ch. 537, L. 1977; R.C.M. 1947, 61-425.

Cross-References

Custody hearings to receive priority, 40-4-216.

CHAPTER 8

ADOPTION

Part 1 — Adoption of Children

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Adoption records not open to public inspection, 2-6-104 (see 40-8-126).

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Substitute birth certificate for person adopted, 50-15-304.

Child adoption agencies, Title 52, ch. 2, part 4.

Subsidized adoption, Title 52, ch. 2, part 5.

40-8-101. Short title. This part may be cited as the "Uniform Adoption Act", as amended.

History: En. Sec. 17, Ch. 240, L. 1957; R.C.M. 1947, 61-217; amd. Sec. 5, Ch. 530, L. 1981.

40-8-102. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 16, Ch. 240, L. 1957; R.C.M. 1947, 61-216.

40-8-103. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Confidential intermediary" means a staff person of a nonprofit agency who has expertise in adoption.

(7) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(8) "Department" means the department of public health and human services provided for in 2-15-2201.

(9) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, or brother or sister.

(10) "Home study" means the process of assisting the prospective adoptive parent or family to assess its own readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the parent or family and its residence with applicable standards.

(11) "Identifying information" means information that reveals or directly indicates the identity of a person and includes the person's name or address.

(12) "Nonidentifying information" means information that does not reveal or directly indicate the identity of a person, including:

(a) medical information and information related to general physical characteristics;

(b) family information, including marital status and the existence of siblings;

(c) religious affiliation;

(d) educational background information that does not reveal specific programs or institutions attended;

(e) general occupation;

(f) hobbies; and

(g) photographs provided by any of the parties involved.

(13) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(14) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(15) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135, 40-8-109, or 40-8-117, whichever is applicable.

History: En. Sec. 1, Ch. 240, L. 1957; R.C.M. 1947, 61-201; amd. Sec. 6, Ch. 530, L. 1981; amd. Sec. 3, Ch. 1, Sp. L. 1981; amd. Sec. 34, Ch. 609, L. 1987; amd. Sec. 7, Ch. 684, L. 1991; amd. Sec. 1, Ch. 275, L. 1995; amd. Sec. 152, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 275 inserted definitions of confidential intermediary, identifying information, and nonidentifying information.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services, as established and provided for in 2-15-2401". Amendment effective July 1, 1995.

Cross-References

Special proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Minors and adults defined, 41-1-101.

40-8-104. Who may be adopted. (1) Any minor may be adopted if:

(a) the minor has no living parent; or

(b) the parental rights of the living parents of the minor have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents consent to the adoption.

(2) An adult may be adopted as provided in part 2 of this chapter.

History: En. Sec. 2, Ch. 240, L. 1957; R.C.M. 1947, 61-202; amd. Sec. 7, Ch. 530, L. 1981.

Cross-References

Adoption of adults, Title 40, ch. 8, part 2.

Hard-to-place child, 52-2-503.

40-8-105. Minor parent. A parent who is a minor shall have the right to relinquish his or her child for adoption, and such relinquishment shall not be subject to revocation by reason of such minority.

History: En. 61-218 by Sec. 6, Ch. 199, L. 1961; R.C.M. 1947, 61-218.

Cross-References

Children born out of wedlock — relinquishment — consent, 40-6-125.

Proceeding to determine father's identity and terminate rights, 40-6-128.

Relinquishment of parental rights, 40-6-135.

Minors and adults defined, 41-1-101.

40-8-106. Who may adopt. The following persons are eligible to adopt a child:

(1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the child;

(2) an unmarried person who is at least 18 years old;

(3) a married person at least 18 years old who is legally separated from the other spouse;

(4) in the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957; amd. Sec. 15, Ch. 240, L. 1971; amd. Sec. 22, Ch. 94, L. 1973; R.C.M. 1947, 61-203.

Cross-References

Husband and wife, Title 40, ch. 2.

Legal separation, 40-4-104.

Best interest of the child — custody to father — legitimation, 40-6-130.

Minors and adults defined, 41-1-101.

Child adoption agencies, Title 52, ch. 2, part 4.

Eligibility for subsidy, 52-2-507.

40-8-107. Venue. Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

History: En. Sec. 4, Ch. 240, L. 1957; R.C.M. 1947, 61-204.

Cross-References

Residence — rules for determining, 1-1-215.

Venue, Title 25, ch.2.

40-8-108. Who may place a child for adoption. A child may be placed for adoption only by:

(1) the department;

(2) a licensed child-placing agency; or

(3) the child's parents.

History: En. Sec. 10, Ch. 530, L. 1981.

40-8-109. Placement for adoption by parent — adoption by nonrelative — requirements before relinquishment of parental rights. (1) A parent who proposes to place a child for adoption with an individual who is not the child's stepparent or a member of the child's extended family shall file with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement;

(b) a relinquishment of parental rights to the prospective adoptive parents, executed voluntarily and in accordance with subsection (8); and

(c) the report of agreements and disbursements required under 40-8-136.

(2) (a) The notice of parental placement must be signed by the parent making the placement and must contain the following information:

(i) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(ii) the name and address of each prospective adoptive parent;

(iii) the name and address or expected date and place of birth of the child; and

(iv) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties listed in subsections (2)(a)(i) through (2)(a)(iii).

(b) The district court shall provide a copy of the notice to the parent making the placement.

(3) Upon receipt of a notice of parental placement, the court shall require the department to conduct an investigation and report to the court within 30 days but not earlier than 72 hours after the birth of the child. The report must state whether counseling for the birth parents is required and whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents, prospective adoptive parents, and their representatives have provided the court with the report required by 40-8-136;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents;

(e) that the requirements of 40-8-115 and 40-8-116 have been met; and

(f) that the proposed placement is in the child's best interest.

(4) The department may contract with licensed social workers and licensed child-placing agencies to conduct the investigations and prepare the report to the court ordered pursuant to subsection (3).

(5) The department may charge the prospective adoptive parents a fee, commensurate with costs, for the investigation and report.

(6) Within 45 days of filing of the notice of parental placement and the report required by 40-8-136, the court shall schedule a hearing to consider the proposed adoptive placement.

(7) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the department.

(b) The hearing is closed to all persons except those persons entitled to notice and their representatives or counsel.

(8) A parent may not execute a relinquishment of parental rights to an individual who is not the child's stepparent or a member of the child's extended family until the following criteria have been met:

(a) not less than 72 hours have elapsed since the birth of the child, if the person relinquishing parental rights is the child's birth mother;

(b) the investigation or home study required by 40-8-115 has been performed; and

(c) the parent has received counseling in accordance with 40-8-116.

(9) If the court finds that all requirements for adoptive placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents or it may issue a final decree if a petition for adoption has been filed under 40-8-121. The prospective adoptive parents shall file their petition to adopt within 30 days of the order.

(10) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child, including granting temporary custody to the prospective adoptive parents or issuing a final decree if a petition for adoption has been filed under 40-8-121.

(11) The court shall send a copy of the final determination made by the court under this section to the central office of the department.

History: En. Sec. 11, Ch. 530, L. 1981; amd. Sec. 4, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 277, L. 1987; amd. Sec. 3, Ch. 18, L. 1989; amd. Sec. 1, Ch. 539, L. 1989; amd. Sec. 3, Ch. 683, L. 1991; amd. Sec. 1, Ch. 684, L. 1991.

40-8-110. Adoption services account. There is an adoption services account in the special revenue fund. The fees collected by the department of public health and human services under 40-8-109 must be deposited into this account and may be used by the department for adoption service.

History: En. Sec. 2, Ch. 539, L. 1989; amd. Sec. 153, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Cross-References

State treasury fund structure, 17-2-102.

40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on a child, as provided in 45-5-201; sexual assault on a child, as provided in 45-5-502; sexual intercourse without consent, as provided in 45-5-503, if the victim was a child; incest, as provided in 45-5-507, if the victim was a child; endangering the welfare of children, concerning a child, as provided in 45-5-622; sexual abuse of children, toward a child, as provided in 45-5-625; or ritual abuse of a minor, as provided in 45-5-627;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(7)(e);

(iv) who has caused the child to be maintained by any public or private children's institution, any charitable agency, or any licensed adoption agency or the department of public health and human services of the state of Montana for a period of 1 year without contributing to the support of the child during that period, if able;

(v) if it is proved to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and the guardian has authority by order of the court appointing the guardian to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to the agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in the agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated. In that case, the court having jurisdiction of the custody of the child shall consent to adoption and a certified copy of its order must be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) must be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of public health and human services or of an agency or witnessed by a representative of the court.

History: En. Sec. 5, Ch. 240, L. 1957; amd. Sec. 2, Ch. 199, L. 1961; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 27, Ch. 512, L. 1975; R.C.M. 1947, 61-205; amd. Sec. 6, Ch. 33, L. 1979; amd. Sec. 8, Ch. 530, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 439, L. 1993; amd. Sec. 1, Ch. 369, L. 1995; amd. Sec. 5, Ch. 458, L. 1995; amd. Sec. 154, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 369 in (1)(a)(i) included offenses of sexual assault on a child, sexual intercourse without consent, incest, and ritual abuse of a minor as crimes precluding a requirement of parental consent for adoption; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 458 in (1)(a)(iii) substituted "41-3-102(7)(e)" for "41-3-102(8)(d)"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (1)(a)(iv) and (2) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Code Commissioner Correction: In (1)(a)(iii), pursuant to the authority contained in sec. 73, Ch. 18, L. 1995, the Code Commissioner substituted reference to 41-3-102(7)(e) for reference to 41-3-102(8)(d).

Cross-References

Taking acknowledgments and affidavits, 3-1-404.

Children born out of wedlock — relinquishment — consent, 40-6-125.

Expected child — intent to release or consent, 40-6-127.

Proceeding to determine father's identity and terminate rights, 40-6-128.

Relinquishment of parental rights, 40-6-135.

Dispositional hearing in abuse and neglect cases, 41-3-406.

Child adoption agencies, Title 52, ch. 2, part 4.

Subsidized adoptions, Title 52, ch. 2, part 5.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

Termination of appointment of guardian for a minor, 72-5-233.

40-8-112. Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

History: En. Sec. 6, Ch. 240, L. 1957; R.C.M. 1947, 61-206.

Cross-References

Best interests of child, 40-4-212.

Statute of Limitations — adoption, 40-6-108.

Revocation of releases, 40-6-135.

40-8-113. Consent of child. If a child is 12 years of age or over, he must consent to his adoption. Consent must be given in court or be in writing in such form as the court shall direct.

History: En. Sec. 7, Ch. 240, L. 1957; R.C.M. 1947, 61-207; amd. Sec. 9, Ch. 530, L. 1981.

Cross-References

Enforcement of minor's rights, 41-1-202.

40-8-114. Adoption policy — best interest of child standard — factors to be considered. (1) It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of children for adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development and as it relates to the express preference of a birth parent to have a child placed with or the express preference of a child to be placed with adoptive parents of a particular religious faith or denomination.

(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of prospective adoptive parents. The authority granted by this subsection includes the authority to receive and to consider, consistent with the best interests of the child, the preferences of birth parents relating to the age, marital status, or religious beliefs of adoptive parents. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

History: En. Sec. 1, Ch. 682, L. 1991.

40-8-115. Placement for adoption by parent — adoption by nonrelative — preplacement investigation or home study required of prospective adoptive parent. (1) A prospective adoptive parent who wishes to adopt a child under 40-8-109 shall initiate the nonagency adoption process by requesting an investigation or home study by the department or a licensed child-placing agency. During the investigation or home study process, the department or agency shall provide the prospective adoptive parent information regarding the nonagency adoption process and a copy of 40-8-116 and this section.

(2) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the department's or child-placing agency's standards for placement of a child.

(3) The department or child-placing agency that conducts the investigation or home study shall prepare a written report containing the results of the investigation or home study. The report must be attached to and made a part of the report required by 40-8-109(3).

History: **En. Sec. 2, Ch. 684, L. 1991.**

40-8-116. Placement for adoption by parent — adoption by nonrelative — birth mother counseling required. (1) In an adoption subject to 40-8-109, the department shall determine whether counseling of the birth parents is required.

(2) If required, counseling must be done by a staff person from the department or a licensed child-placing agency designated to provide this type of counseling.

(3) Counseling must consist of:

(a) an explanation and consideration of adoption procedures that are available to birth parents along with the alternative of nonrelinquishment to assist them in determining the best course of action;

(b) detailed information regarding the nonagency adoption process, including reviewing and providing a copy of 40-8-115 and this section; and

(c) a thorough explanation and consideration of the legal and personal impact of terminating parental rights and of adoption.

(4) The counselor shall prepare a written report containing a description of the topics covered and the results of the counseling, including his opinion indicating whether or not the birth parent understood all issues and was capable of informed consent. This report must be completed and filed with the court no later than the date the relinquishment of parental rights is executed.

(5) The counselor's report must be attached to and made a part of the report required by 40-8-109(3).

History: **En. Sec. 3, Ch. 684, L. 1991.**

40-8-117. Placement for adoption by parent — adoption by relative — requirements. A parent may relinquish parental rights for the purposes of adoption of a child to the child's stepparent or a member of the child's extended family. The relinquishment must be executed voluntarily and in accordance with 40-6-135(2) through (4). The relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

History: **En. Sec. 4, Ch. 684, L. 1991.**

40-8-118 through 40-8-120 reserved.

40-8-121. Petition for adoption. (1) A petition for adoption must be filed in duplicate, verified by the petitioners, and must specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition must be retained by the court. The other must be sent to the department of public health and human services or to the child-placing agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

History: En. Sec. 8, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 18, Ch. 33, L. 1977; R.C.M. 1947, 61-208; amd. Sec. 12, Ch. 530, L. 1981; amd. Sec. 2, Ch. 277, L. 1987; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 233, L. 1989; amd. Sec. 155, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Petition for change of name of natural person, 27-31-101.

Procedure in adult adoption, 40-8-202.

Child adoption agencies, Title 52, ch. 2, part 4.

40-8-122. Investigation. (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department or by a licensed child-placing agency or other person named by the court, unless an investigation has been made prior to the filing as provided in subsection (4). The investigation may be waived by the court or the department if the petitioner is a stepparent of the child or if one of the petitioners is a member of the child's extended family. The report of investigation shall be filed with the court by the investigator at the time the petition is filed or within 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. The report of the investigation shall state:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is a suitable one for the child;

(c) that medical and social histories have been provided to the adoptive parent; and

(d) any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of the investigation shall become a part of the files in the case and shall contain a definite recommendation stating the reasons for or against the proposed adoption.

(4) (a) If an investigation has been made within the 6 months immediately preceding the filing of the petition, the court does not have to order a new investigation to be made.

(b) The report of the earlier investigation must contain the information and recommendation specified by subsections (1) and (3) and be filed with the petition for adoption.

History: **En. Sec. 9, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 2, Ch. 495, L. 1975; R.C.M. 1947, 61-209; amd. Sec. 13, Ch. 530, L. 1981; amd. Sec. 3, Ch. 277, L. 1987; amd. Sec. 1, Ch. 406, L. 1987.**

Cross-References

Child adoption agencies, Title 52, ch. 2, part 4.

Records to be confidential, 52-2-505.

Certification as hard to place, 52-2-506.

40-8-123. Summary decree. (1) If the child is a member of the extended family of one of the petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered thereby, the court in its discretion, after examination of a report ordered or received pursuant to 40-8-122, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and grant a final decree of adoption if satisfied that the adoption is in the best interests of the child.

(2) The department or the child-placing agency may recommend in the investigation report filed with the petition for adoption that the court issue a summary decree as provided for in subsection (1) if:

(a) a period of 6 months has elapsed since the department or licensed child-placing agency placed the child for adoption; and

(b) the department or licensed child-placing agency conducted an investigation during that period.

History: **En. Sec. 10, Ch. 240, L. 1957; amd. Sec. 3, Ch. 199, L. 1961; R.C.M. 1947, 61-210; amd. Sec. 14, Ch. 530, L. 1981; amd. Sec. 4, Ch. 277, L. 1987.**

Cross-References

Best interests of child, 40-4-212, 40-6-130.

40-8-124. Interlocutory and final decree. (1) Upon examination of the report described in 40-8-122, if a report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court shall cause service of process to be made on the parent or parents of the child, except in those cases provided in this section, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing the parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) The citation, together with a copy of the petition for adoption, must be personally served upon the parent or parents. If, however, a parent or parents cannot be found within this state, service may be made by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of service, any parent served does not appear, the court may act upon the petition and the order of the court is binding upon all persons served. However, a person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process may not be

made on any parent who has relinquished the child to the department of public health and human services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court or after the date of placement for adoption, the investigator, if any, shall observe the child in the child's adoptive home and report in writing to the court within 6 months on any circumstances or conditions that may have a bearing on the adoption. After 6 months from the date of the interlocutory decree or the date of placement for adoption, the petitioners may apply to the court for a final decree of adoption. The court must set a time and place for final hearing. Notice of the time and date of the hearing must be served on the department of public health and human services or the licensed child-placing agency or any other person named by the court. The investigator, if any, shall file with the court a written report of the investigator's findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree or the date of placement for adoption. After hearing on the application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order must be made as to the future custody of the child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 19, Ch. 33, L. 1977; R.C.M. 1947, 61-211; amd. Sec. 5, Ch. 277, L. 1987; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 156, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (5) and (6) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Best interests of child, 40-4-212, 40-6-130.

Certificates of adoption, 50-15-303.

40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents.

(2) After the final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child.

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72.

History: En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965; R.C.M. 1947, 61-212; amd. Sec. 1, Ch. 582, L. 1989.

Cross-References

Parent and child relationship defined, 40-6-102.

How parent and child relationship established, 40-6-104.

Relinquishment of parental rights, 40-6-135.

Substitute birth certificate for person adopted, 50-15-304.

Eligibility for subsidy, 52-2-507.

Establishment of parent-child relationship, 72-2-124.

40-8-126. Confidentiality and disclosure of record and proceedings — appointment and duties of confidential intermediary. (1) Unless the court orders otherwise, all hearings held in proceedings under this part are confidential and must be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption must be kept as a permanent record of the court and withheld from inspection. A person may not have access to the records, except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered;

(b) as provided in subsection (7); or

(c) as provided in 50-15-121 and 50-15-122.

(3) All files and records pertaining to adoption proceedings retained by the department or any authorized agency are confidential and must be withheld from inspection, except as provided in 50-15-121 and 50-15-122 and except that the department or authorized agency may disclose:

(a) nonidentifying information to an adoptee, an adoptive or biological parent, or an extended family member of an adoptee or biological parent; and

(b) identifying information to a court-appointed confidential intermediary upon order of the court or as provided in 50-15-121 and 50-15-122.

(4) When an adoptee reaches 18 years of age, the adoptee, an adoptive or biological parent, or an extended family member of the adoptee or biological parent may petition the court for disclosure of the identity of the adoptee, biological son, biological daughter, or biological parent. A petition for disclosure must contain the following information:

(a) the name, address, and identification of the petitioner;

(b) the date of the adoptee's birth;

(c) the county and state where the adoption occurred;

(d) the date of the adoption; and

(e) any information known to the petitioner concerning the biological parents, the adoptive parents, and the adoptee that could assist in locating the person being sought.

(5) After a petition for disclosure has been filed under subsection (4), the court shall appoint a confidential intermediary who shall:

(a) conduct a confidential search for the person sought, as requested in the petition for disclosure;

(b) refrain from disclosing directly or indirectly any identifying information to the petitioner, unless ordered to do so by the court; and

(c) make a written report of the results of the search to the court not later than 6 months after appointment.

(6) Upon appointment, a confidential intermediary is entitled to be paid a reasonable fee plus actual expenses incurred in conducting the search. The fee and expenses must be paid by the petitioner.

(7) A confidential intermediary may inspect otherwise confidential records of the court, the department, or an authorized agency for use in the search. The confidential intermediary may not disclose the contents of the records or any results of a search unless authorized by the court.

(8) If a confidential intermediary is unable to locate the person being sought within 6 months of appointment, the confidential intermediary shall recommend to the court whether a further search is warranted and state the reasons for the recommendation. If the court finds that a further search is warranted, the court may order that the search be continued for a specified time.

(9) If a confidential intermediary locates the person being sought, a confidential inquiry must be made as to whether the located person consents to having that person's present identity disclosed to the petitioner. The court may request that the confidential intermediary assist in arranging contact between the petitioner and the located person.

(10) If a confidential intermediary locates the person being sought and the located person does not consent to having that person's identity disclosed, identifying information regarding that person may be disclosed only upon order of the court for good cause shown.

(11) If the person being sought is found to be deceased, the court may order disclosure of the identity of the deceased to the petitioner.

(12) An individual who knowingly discloses identifying information in violation of this section is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or by both fine and imprisonment.

History: En. Sec. 13, Ch. 240, L. 1957; amd. Sec. 18, Ch. 121, L. 1974; R.C.M. 1947, 61-213; amd. Sec. 3, Ch. 228, L. 1981; amd. Sec. 35, Ch. 609, L. 1987; amd. Sec. 2, Ch. 275, L. 1995; (12)En. Sec. 3, Ch. 275, L. 1995; amd. Sec. 22, Ch. 515, L. 1995; amd. Sec. 157, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Coordination — Composite Section: Chapter 275 inserted (2)(b) concerning subsection (7); substituted (3) regarding retention of files and records for former language that read: "All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, the department of family services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206"; inserted (4) allowing a petition for disclosure; inserted (5) through (11) regarding the powers and duties of a confidential intermediary and identity of deceased person; inserted (12) relating to a penalty; and made minor changes in style.

Chapter 515 amended 40-8-126 in sec. 2, and sec. 22, a coordination section, provided that if Senate Bill No. 150 was passed and approved containing a section that amended 40-8-126, then 40-8-126 must read as provided in sec. 22. Senate Bill No. 150 was passed and approved as Ch. 275, L. 1995, and amended 40-8-126. Therefore, the Code Commissioner has codified the amendments contained in sec. 22, Ch. 515, L. 1995. Chapter 515 inserted (2)(b) concerning access under subsection (7); in (2)(c) substituted reference to 50-15-121 and 50-15-122 for reference to 50-15-206; substituted (3) concerning confidentiality and exception for former text that read: "All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, the department of family services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206"; inserted (4) concerning petition upon adoptee reaching 18 years of age; inserted (5) concerning appointment of confidential intermediary; inserted (6) concerning fee of confidential intermediary; inserted (7) concerning intermediary's inspection of confidential records; inserted (8) concerning search after 6 months; inserted (9) concerning inquiry as to consent of person being sought; inserted (10) concerning court order for disclosure of information identifying person sought; inserted (11) concerning person sought being deceased; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 546 in (3) substituted "department of public health and human services" for "department of social and rehabilitation services, the department of family services"; and made minor changes in style. Amendment effective July 1, 1995. Because of the change in

Ch. 515, the Code Commissioner has not inserted the specific Department name.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Sittings of court — when private, 3-1-313.

Certificate of adoption, 50-15-303.

Substitute birth certificate for person adopted, 50-15-304.

Records to be confidential, 52-2-505.

40-8-127. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder in the district court by any person aggrieved thereby, in the manner provided for appeals from the court in other civil matters.

History: En. Sec. 14, Ch. 240, L. 1957; amd. Sec. 20, Ch. 33, L. 1977; R.C.M. 1947, 61-214.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

40-8-128. Foreign adoption decrees. When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by 40-8-125.

History: En. Sec. 15, Ch. 240, L. 1957; R.C.M. 1947, 61-215.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-8-129 through 40-8-134 reserved.

40-8-135. Placement for adoption by parent — adoption by nonrelative — fees — violation — penalty. (1) Reasonable adoption fees may be paid by the adoptive parent for the actual cost of services documented in the report required by 40-8-136 and approved by the court. The cost of services must relate to:

(a) a petition for adoption;
(b) placement of a child;
(c) medical care or services;
(d) prenatal care;
(e) foster care;
(f) investigation or home study;
(g) counseling; or
(h) other reasonable costs.

(2) A person who knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person anything of value greater than that allowed under subsection (1) commits the offense of paying or charging excessive adoption process fees.

(3) A person convicted of the offense of paying or charging excessive adoption process fees may be fined an amount not to exceed $10,000.

History: En. Sec. 1, Ch. 18, L. 1989; amd. Sec. 5, Ch. 684, L. 1991.

40-8-136. Placement for adoption by parent — adoption by nonrelative — report of agreements and disbursements. (1) Prior to a hearing under 40-8-109, the birth parents, prospective adoptive parents, and their representatives shall file with the court a report of agreements and disbursements, and they shall serve a copy of the report on the central office of the department.

(2) The report must contain:

(a) all oral and written agreements between the parties that relate to the future conduct of a party with respect to the child. If an oral agreement is reported, the substance of the agreement must be contained in the report and a copy of the report must be served on each party to the oral agreement. Copies of all written agreements must be attached to the report.

(b) a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parents in connection with proceedings under this chapter. This accounting must include any expenses related to:

(i) the birth of the child;

(ii) placement of the child with the identified adoptive parents, including an investigation or home study;

(iii) counseling or medical or hospital care received by the birth parent or child prior to or after the child's birth; and

(iv) services relating to the petition for adoption or the placement of the child that were received by or on behalf of a birth parent or any other person.

(c) a statement by each person furnishing information contained in the report, attesting to the correctness and truthfulness of the information furnished by that person.

History: En. Sec. 2, Ch. 18, L. 1989; amd. Sec. 6, Ch. 684, L. 1991.

Part 2
Adoption of Adults

40-8-201. Adoption of adult. A person who is an adult and has attained the age of legal majority may be adopted without the consent of his parents.

History: En. Sec. 1, Ch. 229, L. 1947; R.C.M. 1947, 61-139.

Cross-References

Minors and adults defined, 41-1-101.

Establishment of parent-child relationship, 72-2-124.

40-8-202. Procedure. Except as otherwise inconsistent with this part, the procedure and law for adoption of minors set forth in 40-8-106, 40-8-107, 40-8-121, 40-8-123, 40-8-124, and 40-8-125 shall be applicable in proceedings for the adoption of an adult under the provisions of this part, provided that provisions concerning an investigation under 40-8-122 and an interlocutory decree shall not be applicable in the case of the adoption of an adult.

History: En. Sec. 2, Ch. 229, L. 1947; amd. Sec. 5, Ch. 199, L. 1961; R.C.M. 1947, 61-140; amd. Sec. 2, Ch. 406, L. 1987.

CHAPTER 9

GRANDPARENT VISITATION

Part 1 — General Provisions

40-9-101. Application of Montana Rules of Civil Procedure.
40-9-102. Grandparent visitation rights.

Part 1
General Provisions

40-9-101. Application of Montana Rules of Civil Procedure. (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

(2) A proceeding for grandparent visitation under this section and 40-9-102 shall be entitled, "In re the visitation of ......"

(3) The initial pleading in all proceedings under this section and 40-9-102 shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings shall be denominated as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 1, Ch. 17, L. 1979.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

40-9-102. Grandparent visitation rights. (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights, including but not limited to visitation rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of public health and human services must be given notice of a petition for grandparent visitation regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) A person may not petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of:

(a) the child;

(b) the child's parent, guardian, or custodian; or

(c) the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when the interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent.

History: En. Sec. 2, Ch. 17, L. 1979; amd. Sec. 1, Ch. 616, L. 1983; amd. Sec. 1, Ch. 18, L. 1991; amd. Sec. 158, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), in second sentence, substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Best interests of child, 40-4-212, 40-6-130.

Visitation, 40-4-217.

Effect of final decree of adoption, 40-8-125.

CHAPTERS 10 THROUGH 14

RESERVED

CHAPTER 15

PARTNER AND FAMILY MEMBER ASSAULT, SEXUAL ASSAULT, AND STALKING SAFETY AND PROTECTION OF VICTIMS

Part 1 — General Provisions

40-15-101. Purpose.
40-15-102. Eligibility for order of protection.
40-15-103. Notice of rights when partner or family member assault is suspected.

Part 2 — Order of Protection

40-15-201. Temporary order of protection.
40-15-202. Order of protection — hearing.
40-15-203. Attorney general to provide forms.
40-15-204. Written orders of protection.

Part 3 — Jurisdiction, Venue, and Appeal—Registration of Orders

40-15-301. Jurisdiction and venue.
40-15-302. Appeal to district court.
40-15-303. Registration of orders.

Part 1
General Provisions

40-15-101. Purpose. The purpose of this chapter is to promote the safety and protection of all victims of partner and family member assault, victims of sexual assault, and victims of stalking.

History: En. Sec. 21, Ch. 350, L. 1995.

40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;
(ii) aggravated assault as defined in 45-5-202;
(iii) intimidation as defined in 45-5-203;
(iv) partner or family member assault as defined in 45-5-206;
(v) criminal endangerment as defined in 45-5-207;
(vi) negligent endangerment as defined in 45-5-208;

(vii) unlawful restraint as defined in 45-5-301;

(viii) kidnapping as defined in 45-5-302;

(ix) aggravated kidnapping as defined in 45-5-303; or

(x) arson as defined in 45-6-103.

(2) A victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503 is eligible for an order of protection against the offender regardless of the petitioner's relationship to the offender.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant.

History: **En. Sec. 22, Ch. 350, L. 1995.**

40-15-103. Notice of rights when partner or family member assault is suspected. (1) Whenever a patient seeks health care and the health care provider suspects that partner or family member assault has occurred, the health care provider, outside the presence of the suspected offender, may advise the suspected victim of the availability of a shelter or other services in the community and give the suspected victim immediate notice of any legal rights and remedies available. The notice must include furnishing the suspected victim with a copy of the following statement:

"The city or county attorney's office can file criminal charges against the offender if the offender committed the offense of partner or family member assault.

In addition to the criminal charges filed by the state of Montana, you are entitled to the civil remedies listed below.

You may go to court and file a petition requesting any of the following orders for relief:

(1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;

(2) an order of protection that directs the offender to leave your home and prohibits the offender from having any contact with you;

(3) an order of protection that prevents the offender from transferring any property except in the usual course of business;

(4) an order of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your worksite or other specified place;

(5) an order of protection that gives you possession of necessary personal property;

(6) an order of protection that prohibits the offender from possessing or using the firearm used in the assault.

If you file a petition in district court, the district court may order all of the above and may award custody of your minor children to you or the other parent. The district court may order visitation of your children between the parents. The district court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

The forms that you need to obtain an order of protection are at ______________. You may call ___________ at ______________ for additional information about an order of protection.

You may file a petition in district court at ____________.

You may be eligible for restitution payments from the offender (the offender would repay you for costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a fund administered by the state of Montana for innocent victims of crime). You may call ___________ at ____________ for additional information about restitution or crime victims compensation.

The following agencies may be able to give you additional information or emergency help. (List telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary of services that are available.)"

(2) Partner or family member assault may be suspected by health care workers in circumstances in which a patient repeatedly seeks health care for trauma type injuries or a patient gives an explanation for injuries that is not consistent with the injuries that are observed.

(3) For purposes of this section, "health care provider" has the meaning provided in 50-16-504.

History: En. Sec. 20, Ch. 350, L. 1995.

Part 2

Order of Protection

40-15-201. Temporary order of protection. (1) A petitioner may seek a temporary order of protection from a court listed in 40-15-301. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102, has a relationship to the respondent if required by 40-15-102, and is in danger of harm if the court does not issue a temporary order of protection immediately.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:

(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;

(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;

(c) prohibiting the respondent from removing a child from the jurisdiction of the court;

(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;

(e) removing and excluding the respondent from the residence of the petitioner, regardless of ownership of the residence;

(f) prohibiting the respondent from possessing or using the firearm used in the assault;

(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;

(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;

(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;

(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.

(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.

(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.

History: En. Sec. 23, Ch. 350, L. 1995.

40-15-202. Order of protection — hearing. (1) A hearing must be conducted within 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.

(2) The respondent may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 working days of the filing of the affidavit.

(3) The order of protection may not be made mutually effective by the court. The respondent may obtain an order of protection from the petitioner

only by filing an application for an order of protection and following the procedure described in this chapter.

History: **En. Sec. 24, Ch. 350, L. 1995.**

40-15-203. Attorney general to provide forms. The attorney general shall prepare uniform sample instructions, petition forms, and order forms for temporary orders of protection and for orders of protection. The attorney general shall distribute samples of the instructions, petitions, and forms to the clerk of the district court in each county and to justices', municipal, and city courts. The clerk of the district court, justices of the peace, and municipal and city court judges shall make forms available to the public at no charge.

History: **En. Sec. 25, Ch. 350, L. 1995.**

40-15-204. Written orders of protection. (1) The court may determine, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, that, to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

(2) In a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection.

(3) An order of protection may include all of the relief listed in 40-15-201, when appropriate.

(4) An order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate time period as directed by the court or permanently if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

(5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be terminated upon the petitioner's request that the order be dismissed.

(6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.

(7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.

(8) There is no cost for service of an order of protection.

(9) Any temporary order of protection or order of protection must conspicuously bear the following:

"Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to $10,000 in fines and up to a 5-year jail sentence.

This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter."

History: **En. Sec. 26, Ch. 350, L. 1995.**

Part 3

Jurisdiction, Venue, and Appeal — Registration of Orders

40-15-301. Jurisdiction and venue. (1) District courts, justices' courts, municipal courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-15-201.

(2) When a divorce or custody action involving the parties is pending in district court, a person may file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's, municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city court judge shall immediately certify the pleadings to the original district court after signing an order of protection under this subsection. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, it may conduct a hearing within 45 days of the receipt.

(3) An action brought under this chapter may be filed in the county where the petitioner currently or temporarily resides, the county where the respondent resides, or the county where the abuse occurred. There is no minimum length of residency required to file a petition under this chapter.

(4) The right to petition for relief may not be denied because the petitioner has vacated the residence or household to avoid abuse.

(5) An order of protection issued under this section is effective throughout the state. Courts and law enforcement officials shall give full faith and credit to all orders of protection issued within the state.

(6) A certified copy of an order of protection from another state, along with proof of service, may be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the same manner as an order of protection issued in Montana.

History: En. Sec. 27, Ch. 350, L. 1995.

40-15-302. Appeal to district court. (1) An order issued by a justice's court, municipal court, or city court pursuant to 40-15-201 is immediately reviewable by the district judge upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's court, municipal court, or city court made pursuant to 40-15-201 or 40-15-204.

(2) A case in which an order has been issued by a justice's court, municipal court, or city court pursuant to 40-15-201 or 40-15-204 may be removed to district court upon filing of a notice of removal.

History: En. Sec. 28, Ch. 350, L. 1995.

40-15-303. Registration of orders. (1) The clerk of court, justice of the peace, municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-15-201, 40-15-204, or 40-15-301, mail a copy of the order or any extension, modification, or termination of the order, along with a copy of the proof of service, to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of an order of protection are informed of the existence and terms of the order.

History: En. Sec. 29, Ch. 350, L. 1995.

TITLE 41

MINORS

Ch.
1. Rights and Obligations of Minors.
2. Child Labor.
3. Child Abuse and Neglect.
4. Interstate Placement of Children.
5. Youth Court Act.
6. Interstate Compact on Juveniles.
7. Montana Family Policy Act.

CHAPTER 1

RIGHTS AND OBLIGATIONS OF MINORS

Part 1 — Minority

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41-1-102. Periods of minority — how calculated.
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41-1-406. Psychiatric or psychological counseling under urgent circumstances.
41-1-407. Immunity and responsibility of psychologist, physician, or health care facility.

Chapter Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Residence of minors, 1-1-215.

Youth centers — recreational facilities, 7-16-4103, 7-16-4104, 7-16-4108.

Curfew for minors, 7-32-2302.

Minor beneficiaries under PERS, 19-2-801 through 19-2-803.

Care of children of deceased policemen and firemen, Title 19, ch. 9, 18.

Education of children, Title 20.

Minors not to engage in parimutuel betting, gambling, bingo, raffles, or sports pools, 23-4-301.

Civil liability of parent for shoplifting by minor, 27-1-718.

Banking law relating to minors, 32-1-107, 32-1-444.

Savings and loan shares held by minors, 32-2-418.

Minors' interests in credit union shares, 32-3-504, 32-3-506.

Insurance law relating to minors, 33-15-103, 33-15-401, 33-15-502, 33-20-115, 33-20-1111, 33-22-212, 33-22-304, 33-22-604.

Uniform Reciprocal Enforcement of Support Act, Title 40, ch. 5, part 1.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Parent and child, Title 40, ch. 6.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Day-care facilities, Title 52, ch. 2, part 7.

Operation of vehicles by minors, 61-5-107 through 61-5-109, 61-5-112, 61-5-202.

Child safety restraint law, 61-9-419 through 61-9-423.

Property law relating to minors, 70-1-404, 70-1-420, 70-1-422.

Guardianship, Title 72, ch. 5.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Youth trapping license, 87-2-605.

No fishing license required for minor under 15 years of age, 87-2-805.

Part 1
Minority

Part Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

41-1-101. Minors and adults defined. (1) Minors are:

(a) males under 18 years of age;

(b) females under 18 years of age.

(2) All other persons are adults.

History: En. Secs. 10, 12, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R.C.M. 1921; Cal. Civ. C. Sec. 25; Field Civ. C. Sec. 11; re-en. Sec. 5673, R.C.M. 1935; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973; R.C.M. 1947, 64-101.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

University students — minor defined, 20-25-501.

Civil liability of parent for shoplifting by minor, 27-1-718.

Who may contract, 28-2-201.

Agency — applicability of laws relating to capacity to contract, 28-10-704.

Montana Youth Court Act — adult and youth defined, 41-5-103.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Hard-to-place child defined, 52-2-503.

Child safety restraint law, 61-9-419 through 61-9-423.

41-1-102. Periods of minority — how calculated. The periods specified in 41-1-101 must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R.C.M. 1921; Cal. Civ. C. Sec. 26; re-en. Sec. 5674, R.C.M. 1935; R.C.M. 1947, 64-102.

Cross-References

Compensation and support of person after attaining majority, 40-6-218.

When parental authority ceases, 40-6-234.

Who may not be personal representative, 72-3-501.

41-1-103. Unborn children. A child conceived but not yet born is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R.C.M. 1921; Cal. Civ. C. Sec. 29; Field Civ. C. Sec. 12; re-en. Sec. 5675, R.C.M. 1935; R.C.M. 1947, 64-103.

Cross-References

Expected child — intent to release or consent — petition and notice, 40-6-127.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Afterborn heirs, 72-2-118.

Part 2

Civil Actions Concerning Minors

Part Cross-References

Owner's civil liability for negligent operation of boat, 23-2-505.

Montana Rules of Civil Procedure relating to children, Rules 17(c), 27(a)(2), 40, M.R.Civ.P. (see Title 25, ch. 20).

Suits on behalf of minors, 27-1-323, 27-1-512, 27-1-514.

Minors allowed to make marriage settlements, 40-2-315.

Uniform Parentage Act, Title 40, ch. 6, part 1.

41-1-201. Liability of minors for wrongs — exemplary damages. A minor is civilly liable for a wrong done by him but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113(part).

Cross-References

Pupils — duties and sanctions, 20-5-201.

Civil liability of owner for negligent operation of boat, 23-2-505.

When exemplary damages allowed, 27-1-221.

Civil liability of parent for shoplifting by minor, 27-1-718.

Destruction of property by minor — liability of parents, 40-6-237.

41-1-202. Enforcement of minor's rights. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114.

Cross-References

Appointment of guardian ad litem, 25-5-301.

Right of minor to bring civil action or other proceeding, 27-1-511.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Who may sue for whose seduction, 27-1-514.

Statute of Limitations — when person entitled to bring action is under a disability, 27-2-401.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Delegation of powers by parent or guardian, 72-5-103.

Guardians of minors, Title 72, ch. 5, part 2.

Protection of property of minors and persons under disability, Title 72, ch. 5, part 4.

Part 3

Power to Contract

Part Cross-References

Who may contract, 28-2-201.

Contracts in restraint of marriage generally void — exception for minors, 28-2-706.

Agency, 28-10-104, 28-10-704.

Power to contract — purchase of insurance by minors, 33-15-103.

41-1-301. Delegation of power by minors forbidden. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R.C.M. 1921; Cal. Civ. C. Sec. 33; Field Civ. C. Sec. 15; re-en. Sec. 5678, R.C.M. 1935; R.C.M. 1947, 64-105.

Cross-References

Who may appoint an agent, who may be an agent, 28-10-104.

Agency — applicability of laws relating to capacity to contract, 28-10-704.

41-1-302. Contracts of minors — disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1.

History: En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R.C.M. 1921; Cal. Civ. C. Sec. 34; Field Civ. C. Sec. 16; re-en. Sec. 5679, R.C.M. 1935; R.C.M. 1947, 64-106.

Cross-References

Contracts by minors, 28-2-201.

Contracts in restraint of marriage generally void — exception for minors, 28-2-706.

Marriage settlement by minors, 40-2-315.

Obligations of children, Title 40, ch. 6, part 3.

41-1-303. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school shall have full legal capacity to act in his own behalf and shall have all the rights, powers, and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963; R.C.M. 1947, 64-106.1.

Cross-References

Student financial assistance, Title 20, ch. 26.

Who may contract, 28-2-201.

Applicability of laws relating to capacity to contract — agency, 28-10-704.

Obligations of parents for the support and education of their children, 40-6-211.

41-1-304. When minors may disaffirm. In all cases other than those specified by 41-1-303, 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

History: En. Sec. 18, Civ. C. 1895; re-en. Sec. 3592, Rev. C. 1907; re-en. Sec. 5680, R.C.M. 1921; Cal. Civ. C. Sec. 35; Field Civ. C. Sec. 17; re-en. Sec. 5680, R.C.M. 1935; R.C.M. 1947, 64-107; amd. Sec. 1, Ch. 29, L. 1979.

Cross-References

Who may contract, 28-2-201.

Personal representative — power to recover property which is subject of void or voidable transfer, 72-3-614.

41-1-305. Minor cannot disaffirm contract for necessaries. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part).

Cross-References

Contracts of persons entirely without understanding, 28-2-202.

When person of unsound mind cannot disaffirm contract, 28-2-204.

Liability for acts or debts of spouse, 40-2-106.

Earnings and accumulations of married person, 40-2-205.

Necessity determined by standard of living, 40-2-210.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

Duty of child to support indigent parents, 40-6-301.

41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute or when he has been granted limited emancipation, including a specific right to enter into contracts, under 41-3-406 and 41-3-408.

History: En. Sec. 20, Civ. C. 1895; re-en. Sec. 3594, Rev. C. 1907; re-en. Sec. 5682, R.C.M. 1921; Cal. Civ. C. Sec. 37; Field Civ. C. Sec. 19; re-en. Sec. 5682, R.C.M. 1935; R.C.M. 1947, 64-109; amd. Sec. 6, Ch. 564, L. 1983.

Cross-References

Power to contract — purchase of insurance by minors, 33-15-103.

Marriage settlement by minors, 40-2-315.

Obligations of children, Title 40, ch. 6, part 3.

Discrimination — specific limits on justification, 49-2-403.

Part 4

Validity of Consent to Medical Treatment

Part Cross-References

Consent in general, Title 28, ch. 2, part 3.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Health provisions relating to children, 50-1-202, 50-5-101, 50-15-101, 50-15-108, 50-15-109, 50-15-203, 50-15-302, 50-15-303, 50-17-110, 50-30-102, 50-30-201 through 50-30-220, 50-53-102.

Medical assistance for children, 53-6-101 through 53-6-104.

Treatment of developmentally disabled, Title 53, ch. 20, part 1.

Treatment of seriously mentally ill, Title 53, ch. 21, part 1.

41-1-401. Health professional defined. Health professional as used in this part shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists, or dentists.

History: En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974; R.C.M. 1947, 69-6105.1.

Cross-References

Licensing — practice of medicine, Title 37, ch. 3, part 3.

Licensing — dentists, Title 37, ch. 4, part 3.

Psychologists — licensing, Title 37, ch. 17, part 3.

41-1-402. Validity of consent of minor for health services. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian shall be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

History: En. Sec. 1, Ch. 189, L. 1969; amd. Sec. 1, Ch. 312, L. 1974; amd. Sec. 23, Ch. 100, L. 1977; R.C.M. 1947, 69-6101; amd. Sec. 14, Ch. 440, L. 1989.

Cross-References

When parental authority ceases, 40-6-234.

Emergency medical services, Title 50, ch. 6.

Sexually transmitted diseases, Title 50, ch. 18.

Pregnancy — serological testing, Title 50, ch. 19, part 1.

Mentally ill — voluntary admission of minors, 53-21-112.

Alcoholism and drug dependence, Title 53, ch. 24.

41-1-403. Release of information by physician. (1) A treating physician or other health professional may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor in the circumstances as enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. When the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from a drug- or substance-abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this part, without the consent of the minor.

History: En. Sec. 2, Ch. 189, L. 1969; amd. Sec. 2, Ch. 312, L. 1974; R.C.M. 1947, 69-6102; amd. Sec. 15, Ch. 440, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Privileges, Art. V, M.R.Ev. (see Title 26, ch. 10).

Libel and slander, Title 27, ch. 1, part 8.

Criminal defamation, 45-8-212.

Confidentiality of health care information, Title 50, ch. 16, part 5.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

41-1-404. Financial responsibility of minor. Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. Minors so consenting for such health services shall thereby assume financial responsibility for the cost of said services, except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered.

History: En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974; R.C.M. 1947, 69-6103.

Cross-References

Purchase of insurance by minors, 33-15-103.

Insurance claims and benefits, Title 33, ch. 15, part 5.

When parent not liable for support furnished child, 40-6-216.

Minor not to disaffirm certain obligations, 41-1-306.

41-1-405. Emergencies and special situations. (1) A health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) A health professional may render nonemergency services to minors for conditions that will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal guardians, if a physician determines that the health service should be given.

(4) Self-consent of minors does not apply to sterilization or abortion, except as provided in Title 50, chapter 20, part 2.

History: En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974; R.C.M. 1947, 69-6104; amd. Sec. 11, Ch. 469, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 469 in (4), at end, inserted exception clause referring to Title 50, chapter 20, part 2.

Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Consent in general, Title 28, ch. 2, part 3.

Exemptions from licensing requirements — emergencies, 37-3-103.

Montana Abortion Control Act, Title 50, ch. 20, part 1.

41-1-406. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for such counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of other person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, shall be as valid and binding as if the minor had achieved majority. That is, such minor has the same legal capacity to act and the same legal obligations with regard to the giving of such consent as a person of full legal age and capacity, and such consent may not be subject to later disaffirmance by reason of such minority. The consent of no other person or persons (including but not limited to a spouse, parent, custodian, or guardian) is necessary in order to authorize the psychiatric or psychological counseling of such minor. However, no parent may be obligated for the cost of such counseling without his consent.

History: En. Sec. 1, Ch. 315, L. 1971; amd. Sec. 24, Ch. 100, L. 1977; R.C.M. 1947, 69-6106.

Cross-References

Consent in general, Title 28, ch. 2, part 3.

When parent not liable for support furnished child, 40-6-216.

Endangering the welfare of children, 45-5-622.

41-1-407. Immunity and responsibility of psychologist, physician, or health care facility. (1) No physician, surgeon, dentist, or health or mental health care facility may be compelled against their best judgment to treat a minor on his own consent.

(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: (1), (2)En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974; Sec. 69-6105, R.C.M. 1947; (3)En. Sec. 2, Ch. 315, L. 1971; Sec. 69-6107, R.C.M. 1947; R.C.M. 1947, 69-6105, 69-6107.

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CHAPTER 2

CHILD LABOR

Part 1 — Child Labor Standards Act

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Sheltered workshops, Title 53, ch. 7, part 2.

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Part Cross-References

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Exclusions from minimum wage provisions, 39-3-406.

41-2-101. Repealed. Sec. 14, Ch. 391, L. 1993.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746, Rev. C. 1907; re-en. Sec. 3095, R.C.M. 1921; re-en. Sec. 3095, R.C.M. 1935; R.C.M. 1947, 10-201.

41-2-102. Short title. This part may be cited as the "Child Labor Standards Act".

History: En. Sec. 1, Ch. 391, L. 1993.

41-2-103. Definitions. As used in this part, the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g));

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or has received a passing score on the general education development examination; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed.

History: En. Sec. 2, Ch. 391, L. 1993.

41-2-104. Exemptions. The provisions of this part do not apply to a minor who is employed:

(1) in an agricultural occupation not otherwise prohibited by this part and who has received written consent from the minor's parents or a person standing in place of the parent who works on a farm or ranch where the parent or person is also employed;

(2) in domestic service or an agricultural pursuit performed outside school hours in connection with a home or a farm owned or operated by the minor's parent or by a person standing in place of the parent;

(3) by the parent or a person standing in place of the parent;

(4) during periods of school vacations on a campsite of a nonprofit corporation engaged in citizenship training and character building;

(5) as an actor, model, or performer;

(6) outside school hours by a homeowner in casual work usual to the home of the homeowner and not in connection with the homeowner's business, trade, or profession;

(7) by the legislature as a legislative aide or page;

(8) in the distribution or sale of or in the collection for newspapers, periodicals, or circulars; or

(9) as an official or referee for a nonprofit athletic organization. A minor who is under the age of 14 may not officiate at adult events or activities.

History: En. Sec. 3, Ch. 391, L. 1993; amd. Sec. 1, Ch. 89, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 89 inserted (9) concerning an official or referee for a nonprofit athletic organization and prohibiting a minor under the age of 14 from officiating at adult events or activities; and made minor changes in style. Amendment effective March 9, 1995.

41-2-105. Prohibited employment of minors under fourteen years of age. Except as provided in 41-2-104, a minor who is under 14 years of age may not be employed in or in connection with an occupation.

History: En. Sec. 4, Ch. 391, L. 1993.

41-2-106. Prohibited employment of minors who are fourteen and fifteen years old. Unless otherwise exempted, a minor 14 or 15 years of age may not be employed in the prohibited occupations in 41-2-107 or in:

(1) a manufacturing occupation;

(2) a processing occupation, including but not limited to filleting fish, dressing poultry, cracking nuts, or laundering and drycleaning;

(3) an occupation that requires the performance of duties in a workroom or workplace where goods are manufactured, mined, or processed;

(4) the operation or tending of a hoisting apparatus or of power-driven machinery;

(5) an occupation in connection with:

(a) transporting persons or property by rail, highway, air, water, pipeline, or other means;

(b) warehousing and storage;

(c) communication and public utilities; or

(d) construction or repair;

(6) an occupation in a retail, food service, or gasoline establishment, including:

(a) work performed in or around a boiler or an engine room;

(b) work in connection with the maintenance or the repair of an establishment, machine, or equipment;

(c) outside window washing that involves working from windowsills and all work requiring the use of ladders, scaffolds, or their substitutes at a height of more than 20 feet;

(d) an occupation that involves operating, assembling, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, or bakery-type mixers;

(e) work in freezers and meat coolers and all work preparing meat for sale, except wrapping, scaling, labeling, weighing, pricing, and stacking when performed in other areas;

(f) loading or unloading goods to and from a truck, railroad car, or conveyor; or

(g) an occupation in a warehouse, except for office or clerical work;

(7) the following agricultural occupations, unless otherwise exempt or working as a student-learner pursuant to 41-2-109:

(a) felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 9 inches;

(b) repairing a building from a ladder or scaffold at a height of more than 20 feet;

(c) working inside:

(i) a fruit, forage, or grain storage structure designed to retain an oxygen-deficient or toxic atmosphere; or

(ii) an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(d) handling or using agricultural chemicals classified as poisonous;

(e) handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, or primer cord; or

(f) transporting, transferring, or applying anhydrous ammonia.

History: En. Sec. 5, Ch. 391, L. 1993.

41-2-107. Prohibited employment of minors who are sixteen and seventeen years old. Unless working as an apprentice or student-learner under the provisions of 41-2-110, a minor 16 or 17 years of age may not be employed in or in connection with any of the following occupations:

(1) manufacturing or storing explosives or articles containing explosive components;

(2) logging and the operation of a sawmill, lath mill, or shingle mill;

(3) the operation of power-driven woodworking machines;

(4) an occupation involving exposure to a radioactive substance or ionizing radiation;

(5) the operation of a freight elevator, except for a freight elevator permitted for use under the child labor provisions of the federal Fair Labor Standards Act of 1938, or other power-driven hoisting apparatus;

(6) the operation of a power-driven metal forming, punching, and shearing machine;

(7) a mining occupation;

(8) slaughtering, meatpacking, meat processing, or rendering;

(9) the operation of a power-driven bakery machine;

(10) the operation of a power-driven paper products machine;

(11) the manufacture of brick, tile, or similar products;

(12) the operation of a circular saw, bandsaw, or guillotine shears;

(13) a wrecking or demolition operation;

(14) an excavation operation;

(15) a roofing operation;

(16) riding outside a motor vehicle to assist in transporting or delivering goods; and

(17) a coal mining operation.

History: En. Sec. 6, Ch. 391, L. 1993.

41-2-108. Employment of minors who are fourteen and fifteen years old. (1) Unless enrolled in and employed pursuant to a school supervised and school administered work experience or career exploration program pursuant to 41-2-115(2), a minor 14 or 15 years of age may not be employed in any occupation during school hours.

(2) A minor 14 or 15 years of age may be employed outside school hours in:

(a) the distribution or sale of or in the collection for newspapers, magazines, periodicals, or circulars; and

(b) the following occupations in retail, food service, and gasoline service establishments:

(i) office and clerical work, including the operation of an office machine;

(ii) cashiering, selling, modeling, art work, work in an advertising department, window trimming, and comparative shopping;

(iii) price marking and tagging by hand or by machine, assembling orders, packing, and shelving;

(iv) bagging and carrying out a customer's order;

(v) errand and delivery work by foot, bicycle, or public transportation;

(vi) cleanup work, including the use of a vacuum cleaner and a floor waxer, and maintenance of grounds, but not including the use of a power-driven mower or cutter;

(vii) kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of the work, which may include but are not limited to a dishwasher, toaster, dumbwaiter, popcorn popper, milkshake blender, and coffee grinder; or

(viii) work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; but not including work involving the use of a pit, a rack, or a lifting apparatus or involving the inflation of a tire mounted on a rim equipped with a removable ring.

History: **En. Sec. 7, Ch. 391, L. 1993.**

41-2-109. Exemptions from prohibited occupations in agriculture. (1) The prohibitions from employment in agricultural operations provided for in 41-2-106(7) do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

(a) The student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) The student-learner is employed under a written agreement, providing that:

(i) the work is incidental to training;

(ii) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(iv) a schedule of organized and progressive work processes to be performed on the job has been prepared.

(c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.

(d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in 41-2-106(7) do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department

and if the minor is employed outside school hours on the equipment for which the minor has been trained.

History: En. Sec. 8, Ch. 391, L. 1993.

41-2-110. Exemptions from prohibited employment of minors who are sixteen or seventeen years old. (1) The prohibitions in 41-2-107 do not apply to the employment of an apprentice or student-learner who is 16 or 17 years of age if the minor is employed under the following conditions:

(a) for an apprentice, if:

(i) the minor is employed in a craft recognized as an apprenticeable trade;

(ii) the work is incidental to the minor's training;

(iii) the work is intermittent, for short periods of time, and under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and

(iv) the minor is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that bureau or is registered by the department as employed in accordance with the standards of the department;

(b) for a student-learner, if:

(i) the student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school;

(ii) the student-learner is employed under a written agreement, providing that:

(A) the work of the student-learner is incidental to the student-learner's training;

(B) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(C) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(D) a schedule of organized and progressive work processes to be performed on the job has been prepared;

(iii) the written agreement contains the name of the student-learner and is signed by the employer and the school coordinator or principal; and

(iv) copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) This exemption for the employment of student-learners may be revoked by the department in any situation if the department finds that reasonable precautions have not been observed for the safety of minors employed under the exemption.

(3) A high school graduate who is 16 or 17 years of age may be employed in an occupation in which the graduate has completed training as a student-learner as provided in this section.

History: En. Sec. 9, Ch. 391, L. 1993.

41-2-111. Repealed. Sec. 14, Ch. 391, L. 1993.

History: En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907; re-en. Sec. 3096, R.C.M. 1921; re-en. Sec. 3096, R.C.M. 1935; R.C.M. 1947, 10-202.

41-2-112. Repealed. Sec. 1, Ch. 241, L. 1989.

History: **En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907; re-en. Sec. 3097, R.C.M. 1921; re-en. Sec. 3097, R.C.M. 1935; R.C.M. 1947, 10-203.**

41-2-113. Repealed. Sec. 14, Ch. 391, L. 1993.

History: **En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R.C.M. 1921; re-en. Sec. 3098, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1977; R.C.M. 1947, 10-204.**

41-2-114. Repealed. Sec. 14, Ch. 391, L. 1993.

History: **En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R.C.M. 1921; re-en. Sec. 3099, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1977; R.C.M. 1947, 10-205.**

41-2-115. Working hours. (1) Unless otherwise exempt or as provided in subsection (2), a minor who is 14 or 15 years of age:

(a) may not be employed before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards); or

(b) may not be employed more than:

(i) 3 hours on a school day;

(ii) 18 hours in a school week;

(iii) 8 hours on a nonschool day; or

(iv) 40 hours in a week in a nonschool week.

(2) A minor who is 14 or 15 years of age and who is enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program approved by the department or the office of public instruction may be employed up to 23 hours in 1 week when the program is in session, any portion of which may be during school hours.

History: **En. Sec. 10, Ch. 391, L. 1993.**

41-2-116. Enforcement — right to enter and inspect premises and records — subpoena power. The department shall enforce the provisions of this part and file a complaint against a person who violates the provisions of this part. The department may at any time enter and inspect any place or establishment governed by the provisions of this part and have access to employment records kept on file by the employer that may aid in the enforcement of this part. The department may subpoena documentary evidence relating to an investigation under this part.

History: **En. Sec. 11, Ch. 391, L. 1993.**

41-2-117. Power to adopt rules. The department shall adopt rules, including definitions of terms, to carry out the purposes of this part and to prevent the circumvention or evasion of this part.

History: **En. Sec. 12, Ch. 391, L. 1993.**

41-2-118. Penalties. An employer who violates any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day during which a violation of this part continues constitutes a separate offense, and the employment of a minor in violation of this part constitutes, with respect to each minor employed, a separate offense.

History: **En. Sec. 13, Ch. 391, L. 1993.**

41-2-119 and 41-2-120 reserved.

41-2-121. Repealed. Sec. 14, Ch. 391, L. 1993.

History: **En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907; re-en. Sec. 3100, R.C.M. 1921; re-en. Sec. 3100, R.C.M. 1935; R.C.M. 1947, 10-206.**

CHAPTER 3

CHILD ABUSE AND NEGLECT

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Chapter Cross-References

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Justifiable use of force with respect to children, 45-3-104, 45-3-107.

Custodial interference, 45-5-304.

Incest, 45-5-507.

Provisions generally applicable to sexual crimes, 45-5-511.

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Welfare provisions relating to children and families, 53-2-101, 53-2-201, 53-2-206, 53-2-610; Title 53, ch. 3.

Aid to Families With Dependent Children, Title 53, ch. 4, part 2.

Part 1

General

41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible; and

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect.

(2) It is the policy of this state to:

(a) protect, whenever possible, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection; and

(c) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(3) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(4) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

History: (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300,

10-1303; amd. Sec. 1, Ch. 543, L. 1979; amd. Sec. 1, Ch. 494, L. 1995; amd. Sec. 1, Ch. 564, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 494 inserted (4) requiring placement of a child with the child's extended family prior to placement in an alternative protective or residential facility; and made minor changes in style.

Chapter 564 inserted (1)(e) expanding state policy to ensure no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; inserted (2)(a) expanding state policy to protect, whenever possible, family unity; inserted (2)(c) expanding state policy to ensure that whenever removal of a child is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage, when appropriate; and made minor changes in style.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Use of force by parent, guardian, or teacher, 45-3-107.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent;

(b) a staff person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare; or

(ii) threatened harm to a child's health or welfare.

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(6) "Department" means the department of public health and human services provided for in 2-15-2201.

(7) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or willfully surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(f) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(8) "Limited emancipation" means a status conferred on a youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(9) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(10) "Parent" means a biological or adoptive parent or stepparent.

(11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function. The term includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(12) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent.

(13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(14) "Social worker" means an employee of the department who, prior to the employee's field assignment, has been educated or trained or is receiving education or training in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

(15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(16) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (16), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(17) "Youth in need of care" means a youth who is abused or neglected.

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979; amd. Sec. 2, Ch. 511, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 564, L. 1983; amd. Sec. 1, Ch. 626, L. 1985; amd. Sec. 1, Ch. 463, L. 1987; amd. Sec. 36, Ch. 609, L. 1987; amd. Sec. 1, Ch. 474, L. 1989; amd. Sec. 1, Ch. 439, L. 1993; amd. Sec. 6, Ch. 458, L. 1995; amd. Sec. 2, Ch. 528, L. 1995; amd. Sec. 159, Ch. 546, L. 1995; amd. Sec. 2, Ch. 564, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 458 deleted definition of dependent youth (see 1995 Session Law for text); in definition of limited emancipation, after "conferred on a", deleted "dependent"; inserted definition of parent; in definition of youth in need of care, after "who is", deleted "dependent"; adjusted subsection references; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 528 in definition of child abuse or neglect inserted (c) exempting self-defense, defense of others, or action taken to prevent a child from self-harm; and made minor changes in style.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services provided for in 2-15-2401"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 564 in definition of child abuse or neglect, in (a)(i) after "welfare", deleted "as defined in subsection (8)" and in (a)(ii), after "welfare", deleted "as defined in subsection (15)"; in definition of harm to a child's health or welfare inserted (c) expanding definition to include person who induces or attempts to induce child into giving untrue testimony of abuse or neglect by parent or responsible person; in definition of sexual abuse inserted (b) providing that sexual abuse does not include necessary touching of infant or toddler while attending to sanitary or health care needs; in definition of social worker, after "department", substituted current definition of social worker for ""Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both"; and made minor changes in style.

Cross-References

Admittance of child to school, 20-5-101.

Compulsory attendance and excuses, 20-5-103.

Limitations on liability for emergency care rendered by physician, 27-1-714.

Montana Medical Legal Panel Act, Title 27, ch. 6.

Medicine — regulation and licensing, Title 37, ch. 3.

Form, execution, and revocation of releases — termination of parents' or guardian's rights, 40-6-135.

Obligations of parents, Title 40, ch. 6, part 2.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Remedy for parental abuse, 40-6-233.

Parent allowed to relinquish services and custody of child, 40-6-235.

Consent required for adoption, 40-8-111.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Incest, 45-5-507.

Provisions generally applicable to sexual crimes, 45-5-511.

Aggravated promotion of prostitution, 45-5-603.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Unlawful transactions with children, 45-5-623.

Unlawful possession of intoxicating substance by children, 45-5-624.

Obscenity, 45-8-201.

Criminal possession of dangerous drugs, 45-9-102.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

Emergency medical services, Title 50, ch. 6.

Living wills, Title 50, ch. 9.

41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the youth court has concurrent jurisdiction with the district court over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.

(2) Venue is determined pursuant to 41-5-204.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302; amd. Sec. 7, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (1)(c), after "neglected", deleted "or caused the dependency of"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Child custody jurisdiction, 40-4-211.

Dispositional hearing, 41-3-406.

Priority of Youth Court hearings, 41-5-110.

Montana Youth Court — jurisdiction of the court, 41-5-203.

41-3-104. Renumbered 41-3-1122. Sec. 31, Ch. 465, L. 1983.

41-3-105. Renumbered 41-3-1125. Sec. 31, Ch. 465, L. 1983.

41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

History: En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322.

Cross-References

District Court — original jurisdiction, 3-5-302.

County Attorney — prosecutorial duties, 7-4-2712.

Incest, 45-5-507.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

Criminal liability of parent or guardian for use of firearms by children under fourteen, 45-8-345.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

41-3-107. Interagency cooperation. (1) To effectuate the purposes of this chapter, the department of public health and human services shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. The cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

(2) The department shall enter into a cooperative agreement with other state agencies, as provided in 52-2-203, for the purpose of implementing this section.

History: En. Sec. 4, Ch. 543, L. 1979; amd. Sec. 12, Ch. 609, L. 1987; amd. Sec. 4, Ch. 655, L. 1991; amd. Sec. 160, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Board of Public Education — powers and duties, 20-2-121.

Montana Youth Court Act — declaration of purpose, 41-5-102.

41-3-108. Child protective teams. The county attorney or the department of public health and human services may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and the child's family. The supervisor of child protective services in a local service area or the supervisor's designee shall serve as the team's coordinator. Members shall include:

(1) a social worker;

(2) a member of a local law enforcement agency;

(3) a representative of the medical profession;

(4) a county attorney; and

(5) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

History: En. Sec. 5, Ch. 543, L. 1979; amd. Sec. 37, Ch. 609, L. 1987; amd. Sec. 1, Ch. 67, L. 1989; amd. Sec. 161, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Educational goals and duties — recognition of Indian cultural heritage, Art. X, sec. 1(2), Mont. Const.

Disclosure of confidential child abuse records to child protective team, 41-3-205.

Duty to strengthen child welfare services, 52-2-112.

Part 2

Reports and Investigations

41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of public health and human services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official;

(h) clergy; or

(i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect.

(3) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A clergyperson or priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in that person's capacity as a clergyperson or priest;

(ii) the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of the clergyperson's or priest's church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the clergyperson or priest.

(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch.

543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 79, L. 1989; amd. Sec. 1, Ch. 785, L. 1991; amd. Sec. 8, Ch. 458, L. 1995; amd. Sec. 162, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 458 inserted (2)(i) regarding guardian or advocate; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Duties of teacher — nonpayment for failure to comply, 20-4-301.

Doctor-patient privilege, 26-1-805.

Adjudicatory hearing — temporary disposition, 41-3-404.

Standards for day care, 52-2-731.

41-3-202. Action on reporting. (1) Upon receipt of a report, as required by 41-3-201, that a child is or has been abused or neglected, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

(2) An initial investigation into the home of the child may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(4) If the child's interview is videotaped, an unedited videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall advise the county attorney and the child's family of its investigation.

(b) If from the investigation it appears that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department shall destroy all records concerning the report and the investigation. The destruction must be completed within 20 days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system containing child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department, its local affiliate, and the county attorney of the county in which the facility is located.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 126, L. 1989; amd. Sec. 1, Ch. 329, L. 1993; amd. Sec. 1, Ch. 146, L. 1995; amd. Sec. 163, Ch. 546, L. 1995; amd. Sec. 3, Ch. 564, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 146 inserted (3)(b) (now (5)(b)) requiring destruction of records of reports of child abuse or neglect if the child is determined not to have been abused or neglected and the initial report is unfounded; in (4) (now (6)) at beginning of second sentence, inserted reference to subsection (3)(b) (now (5)(b)); and made minor changes in style. The Code Commissioner has renumbered the reference in (6) to subsection (5)(b) to reflect the amendments made by Ch. 564.

Chapter 546 in (5) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995. The amendment by Ch. 546 in (5) was rendered void by a style change in Ch. 146.

Chapter 564 inserted (2) authorizing initial investigation into child's home upon receipt of anonymous report, but prohibiting removal from home unless independent, corroborative information is developed within 48 hours of investigation; inserted (4) requiring unedited videotape to be made available to child's family upon request; in (5), in first sentence after "child", inserted "pursuant to 41-3-301" and in second sentence, after "county attorney", inserted "and the child's family"; in (6), after "department", inserted "and, upon request, to the family"; and made minor changes in style.

Cross-References

Remedy for parental abuse, 40-6-233.

Emergency protective service, 41-3-301.

Responsibility of providing protective services, 41-3-302.

Records and reports required of health care facilities — confidentiality, 50-5-106.

Child rehabilitation — duties of Department, 52-2-113.

41-3-203. Immunity from liability. (1) Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose.

(2) A person who provides information pursuant to 41-3-201 that is substantiated by the department or a person who uses information received pursuant to 41-3-205 that is substantiated by the department to refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through employment or volunteer activities may have unsupervised contact with children is immune from civil liability unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979; amd. Sec. 1, Ch. 181, L. 1993; amd. Sec. 9, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (1), near end after "person", inserted "was grossly negligent" and deleted former last sentence that read: "There is a rebuttable presumption that the person acted in good faith and with no malicious purpose"; inserted (2) regarding liability of person who provides or uses information; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Immunity and responsibility of psychologist, physician, or health care facility, 41-1-407.

Records and reports required of health care facilities — confidentiality, 50-5-106.

41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section must be paid by the department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202(3)(b).

History: En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979; amd. Sec. 38, Ch. 609, L. 1987; amd. Sec. 2, Ch. 146, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 146 in (5) inserted second sentence requiring destruction of evidence and initial report if confirmation report is not made; and made minor changes in style.

Cross-References

Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).

Validity of consent of minor for health services, 41-1-402.

Responsibility of providing protective services, 41-3-302.

Evidence in cases involving sexual offenses, Title 46, ch. 15, part 4.

41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department of public health and human services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or will be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (o) must be made in writing. Disclosure under this subsection (o) is limited to information that indicates a risk to children posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203; or

(y) a member of a youth placement committee formed under the provisions of 41-5-525.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979; amd. Sec. 1, Ch. 287, L. 1987; amd. Sec. 39, Ch. 609, L. 1987; amd. Sec. 1, Ch. 110, L. 1989; amd. Sec. 2, Ch. 126, L. 1989; amd. Sec. 2, Ch. 510, L. 1991; amd. Sec. 5, Ch. 655, L. 1991; amd. Sec. 15, Ch. 610, L. 1993; amd. Sec. 10, Ch. 458, L. 1995; amd. Sec. 164, Ch. 546, L. 1995; amd. Sec. 4, Ch. 564, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 458 in (3), in introductory clause after first "state", substituted "and" for "or" and at end inserted "or country"; in (3)(a) inserted "military enclave, or Indian tribal organization, that is" and at end inserted "and that otherwise meets the disclosure criteria contained in this section"; in (3)(c), at beginning before "health or mental health", deleted "licensed"; in (3)(e), after "or the", inserted "child's legal guardian or legal representative, including the" and at end inserted reference to attorney or advocate for a pending case; inserted (3)(f) through (3)(j), (3)(l), (3)(m), (3)(o), (3)(p), and (3)(y) specifying other persons or entities to whom disclosure may be permitted; in (3)(n), after "license", inserted "or registration that is required" and at end deleted "if the investigation is based on a substantiated report and the applicant is notified of the investigation"; in (3)(q), after "department", inserted "or other state agency"; in (3)(t), after "officer", inserted "or attorney who is hired by or represents the department" and after "investigation" inserted "defense"; in (3)(w), at end, deleted "who is not listed in subsection (3)"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of social and rehabilitation services, the department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 564 at beginning of second sentence in (1) inserted exception clause; in (3)(d) inserted "or person designated by a parent or guardian"; inserted second sentence in (4) prohibiting use of subsection to compel confidentiality; inserted (5) exempting news organization or its employee from liability for reporting facts or statements made by family member if child's confidentiality is maintained; and made minor changes in style.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Doctor-patient privilege, 26-1-805.

Confidential communications by student to employee of educational institution, 26-1-809.

Child protective teams, 41-3-108.

Foster Care Review Committee, 41-3-1115.

Youth Court — preliminary investigation and disposition, 41-5-301.

Youth Court — confidentiality of proceedings — records, Title 41, ch. 5, part 6.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

41-3-206. Procedure in case of child's death. (1) A person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report the person's suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report the person's suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, the family of the deceased child, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979; amd. Sec. 5, Ch. 564, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 564 in (2), after "service", inserted "the family of the deceased child"; and made minor changes in style.

Cross-References

Homicide, Title 45, ch. 5, part 1.

41-3-207. Penalty for failure to report. (1) Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

(2) Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985.

Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Liability for negligence as well as willful acts, 27-1-701.

Misdemeanor — no penalty specified, 46-18-212.

41-3-208. Rulemaking authority. (1) The department of public health and human services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

History: En. Sec. 1, Ch. 567, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 2, Ch. 287, L. 1987; amd. Sec. 40, Ch. 609, L. 1987; amd. Sec. 7, Ch. 696, L. 1991; amd. Sec. 165, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3
Protective Care

Part Cross-References

Establishment of youth guidance center, 7-16-2102 through 7-16-2104.

41-3-301. Emergency protective service. (1) Any child protective social worker of the department of public health and human services, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible.

(2) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(3) A petition must be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of public health and human services shall make the necessary arrangements for the youth's well-being as are required prior to the court hearing.

History: En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979; amd. Sec. 1, Ch. 659, L. 1985; amd. Sec. 41, Ch. 609, L. 1987; amd. Sec. 166, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) and (4) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Remedy for parental abuse, 40-6-233.

Declaration of policy, 41-3-101.

Action on reporting, 41-3-202.

Abuse, neglect, and dependency petitions, 41-3-401.

Foster homes and other private institutions, Title 41, ch. 3, part 5.

Taking into custody, 41-5-314.

41-3-302. Responsibility of providing protective services. (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

History: En. 10-1315 by Sec. 11, Ch. 328, L. 1974; R.C.M. 1947, 10-1315; amd. Sec. 13, Ch. 543, L. 1979; amd. Sec. 4, Ch. 511, L. 1981; amd. Sec. 42, Ch. 609, L. 1987; amd. Sec. 167, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Action on reporting, 41-3-202.

Order for immediate protection of youth, 41-3-403.

Taking into custody, 41-5-314.

Child rehabilitation — duties of Department, 52-2-113.

County departments of public welfare, Title 53, ch. 2, part 3.

41-3-303. Guardian ad litem. (1) In every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; and

(f) to perform other duties as directed by the court.

History: En. Sec. 14, Ch. 543, L. 1979; amd. Sec. 1, Ch. 384, L. 1985; amd. Sec. 4, Ch. 434, L. 1993.

Cross-References

Guardian ad litem, 25-5-301.

Representation of child, 40-4-205.

When parental authority ceases, 40-6-234.

Enforcement of minor's rights, 41-1-202.

Guardian ad litem defined, 41-3-603.

Appointment of guardian ad litem, 41-5-512.

Guardians of minors, Title 72, ch. 5, part 2.

Part 4
Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse and neglect petitions. (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions alleging abuse or neglect. The county attorney, the attorney general, or an attorney hired by the department with the written consent of the county attorney or the attorney general may require all state, county, and municipal agencies, including law enforcement agencies, to conduct the investigations and furnish reports that may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except when the proceeding is instituted or commenced at the request of the department of public health and human services, a citation must be issued and served upon a representative of the department prior to the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the provisions of subsections (10)(a) through (10)(c) or any other relief that may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party.

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979; amd. Sec. 5, Ch. 511, L. 1981; amd. Sec. 2, Ch. 659, L. 1985; amd. Sec. 2, Ch. 463, L. 1987; amd. Sec. 43, Ch. 609, L. 1987; amd. Sec. 2, Ch. 329, L. 1993; amd. Sec. 11, Ch. 458, L. 1995; amd. Sec. 168, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 458 in (1), after "by the county", deleted "welfare department or office of human services" and after "hired by the" substituted "department" for "county welfare department or office of human services"; in first sentence of (1), in (3), and in (9)(a), after "neglect", deleted "or dependency"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (8) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Duties of Attorney General, 2-15-501.

Guardian ad litem — appointment, 25-5-301.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Representation of child, 40-4-205.

Best interest of child, 40-4-212, 40-6-130.

Consent required for adoption, 40-8-111.

Enforcement of minor's rights, 41-1-202.

Prosecution of offenders — abuse, neglect, dependency, 41-3-106.

Action on reporting, 41-3-202.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Appointment of guardian ad litem, 41-5-512.

Child rehabilitation — duties of Department, 52-2-113.

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

Guardians of minors, Title 72, ch. 5, part 2.

41-3-402. Petition for temporary investigative authority and protective services. (1) In a case in which it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services must state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services must be supported by an affidavit signed by the county attorney, the attorney general, or an attorney hired by the county or must be supported by a department of public health and human services report stating in detail the facts upon which the request is based.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3); amd. Sec. 3, Ch. 659, L. 1985; amd. Sec. 44, Ch. 609, L. 1987; amd. Sec. 12, Ch. 458, L. 1995; amd. Sec. 169, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 458 in (1) and (3), after "by the county", deleted "welfare department or office of human services"; in (3) inserted "must be supported by" and after "department" deleted "of family services"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (3) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Duties of Attorney General, 2-15-501.

Affidavits, Title 26, ch. 1, part 10.

Action on reporting, 41-3-202.

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why the person has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having legal custody;

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5); amd. Sec. 4, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 696, L. 1991; amd. Sec. 1, Ch. 112, L. 1993; amd. Sec. 1, Ch. 362, L. 1993; amd. Sec. 13, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (1)(c), in last sentence, inserted final clause regarding contested case hearing resulting from adverse licensing action. Amendment effective April 14, 1995.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Contempts, Title 3, ch. 1, part 5.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Masters, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

Best interests of child, 40-4-212, 40-6-130.

Remedy for parental abuse, 40-6-233.

Psychiatric or psychological counseling under urgent circumstances, 41-1-406.

Action on reporting, 41-3-202.

Responsibility of providing protective services, 41-3-302.

Taking into custody, 41-5-314.

Child rehabilitation — duties of Department, 52-2-113.

Department to accept custody of children committed by courts, 52-2-115.

41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse or neglect, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the court determines that the youth is an abused or neglected child, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

History: En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979; amd. Sec. 5, Ch. 659, L. 1985; amd. Sec. 14, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (3), after "neglect", deleted "or dependency"; in (4)(a) and (4)(b), after "neglected", deleted "or dependent"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Remedy for parental abuse, 40-6-233.

Admissibility and preservation of evidence, 41-3-204.

Payment for support of youth in need of care — reimbursement by county, 41-3-1122.

Evidence in cases involving sexual offenses, Title 46, ch. 15, part 4.

41-3-405. Combined with 41-5-805, renumbered 41-3-1123. Sec. 31, Ch. 465, L. 1983.

41-3-406. Dispositional hearing — contributions by parents or guardians for youth's care. (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parents or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(c) transfer legal custody to any of the following:

(i) the department;

(ii) a child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by the department or a licensed child-placing agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(2) If the youth is transferred to the custody of the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979; amd. Sec. 170, Ch. 575, L. 1981; amd. Sec. 3, Ch. 564, L. 1983; amd. Sec. 6, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 696, L. 1991; amd. Sec. 2, Ch. 362, L. 1993; amd. Sec. 15, Ch. 458, L. 1995; amd. Sec. 170, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 458 in (1)(c)(iii) substituted "the department or a licensed child-placing" for "a social service". Amendment effective April 14, 1995.

Chapter 546 in (3), (6)(a), and (6)(b) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Jurisdiction and venue, 41-3-103.

Responsibility of providing protective services, 41-3-302.

Priority of Youth Court hearings, 41-5-110.

Endangering the welfare of children, 45-5-622.

Department to accept custody of children committed by courts, 52-2-115.

Guardians of minors, Title 72, ch. 5, part 2.

41-3-407. Combined with 41-5-806, renumbered 41-3-1124. Sec. 31, Ch. 465, L. 1983.

41-3-408. Limited emancipation. (1) The court may, upon the request of a youth who is 16 years of age or older, the youth's parent, or the department, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(g) that, if it is considered necessary by the court, the youth will undergo periodic counseling with an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct the youth's own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) The court, on its own motion or on the motion of the county attorney or any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth has violated a condition of the limited emancipation order; or

(c) the best interests of the youth are no longer served by limited emancipation.

History: En. Sec. 5, Ch. 564, L. 1983; amd. Sec. 8, Ch. 696, L. 1991; amd. Sec. 16, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (1), after "The court", deleted "after the dispositional hearing provided for in 41-3-406" and after "older" inserted "the youth's parent, or the department"; in (2)(g) inserted "if it is considered necessary by the court"; deleted former (5) regarding provision of funds by Department to finance transition to limited emancipation status (see 1995 Session Law for text); in (5), after "motion of", inserted "the county attorney or"; deleted former (6)(b) that read: "(b) the youth is failing to diligently pursue graduation from high school"; deleted (6)(e) that read: "(e) the youth has discontinued periodic counseling with approved advisors"; deleted (7) that read: "(7) The department shall mail a copy of this part to all high school counseling offices"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Schools — compulsory attendance and excuses, 20-5-103.

Obligations of parents, Title 40, ch. 6, part 2.

Minor cannot disaffirm certain obligations, 41-1-306.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Definitions — limited emancipation, 41-3-102.

41-3-409. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law. An appeal does not stay the order or decree appealed from; however, the supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

History: En. Sec. 3, Ch. 463, L. 1987.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

41-3-410. Length of time in foster care — permanent disposition. The court may terminate parental rights under 41-3-609(2) or order other permanent legal custody that will provide for the permanent placement of the child when legal custody of a youth has been transferred to the department under this part and:

(1) the child has been in an out-of-home placement for a cumulative total period of 1 year or longer pursuant to court order and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement; or

(2) the child has been in an out-of-home placement for a cumulative total period of 2 years or longer pursuant to court order, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

History: En. Sec. 1, Ch. 599, L. 1991.

Part 5

Foster Homes and Other Private Institutions (Renumbered by Sec. 31, Ch. 465, L. 1983)

Part Compiler's Comments

Renumbered Sections:

41-3-501. Renumbered 41-3-1102(3), (4). Sec. 31, Ch. 465, L. 1983.

41-3-502. Renumbered 41-3-1141. Sec. 31, Ch. 465, L. 1983.

41-3-503. Renumbered 41-3-1142. Sec. 31, Ch. 465, L. 1983.

41-3-504. Renumbered 41-3-1143. Sec. 31, Ch. 465, L. 1983.

Part 6

Parent-Child Legal Relationship Termination

Part Cross-References

Relinquishment of parental rights, 40-6-135.

Adoption — effect of final decree, 40-8-125.

41-3-601. Short title. This part may be cited as the "Parent-Child Legal Relationship Termination Act of 1981".

History: En. Sec. 1, Ch. 420, L. 1981.

41-3-602. Purpose. This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations when there is a determination that a child is abused or neglected, as defined in 41-3-102.

History: En. Sec. 2, Ch. 420, L. 1981; amd. Sec. 17, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 near end, after "neglected", deleted "or dependent"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Best interest of child, 40-4-212.

41-3-603. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a petition for the termination of the parent-child legal relationship.

(2) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

(3) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

(4) "Youth in need of care" means a youth who is abused or neglected as defined in 41-3-102.

History: En. Sec. 3, Ch. 420, L. 1981; amd. Sec. 1, Ch. 1, L. 1983; amd. Sec. 1, Ch. 388, L. 1985; amd. Sec. 18, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in definition of youth in need of care, after "who is", deleted "dependent"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Guardian ad litem, Title 25, ch. 5, part 3; 41-3-303.

Enforcement of minor's rights, 41-1-202.

41-3-604 through 41-3-606 reserved.

41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. If termination of a parent-child legal relationship is ordered, the court may transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(a) the department;

(b) a licensed child-placing agency; or

(c) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child.

(2) After a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed in accordance with 41-3-401(12).

(3) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

History: En. Sec. 4, Ch. 420, L. 1981; amd. Sec. 2, Ch. 388, L. 1985; amd. Sec. 19, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (1), at end of first sentence, inserted "pursuant to 41-3-609", at beginning of second sentence inserted "If", and substituted last clause in second sentence and (1)(a) through (1)(c) regarding transfer of permanent legal custody to certain entities for "shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition"; in (2), after "After", deleted "the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Duties of Attorney General, 2-15-501.

Guardian ad litem, Title 25, ch. 5, part 3.

Trial by jury, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

41-3-608. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.

History: En. Sec. 5, Ch. 420, L. 1981.

Cross-References

Service of process and other papers, Title 25, ch. 3.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by the parents as set forth in 41-3-102(7)(e);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.

(5) If a person is convicted of a felony in which sexual intercourse occurred or if a minor is adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, a child is born, the court may terminate the offender's parental rights to the child at any time after the conviction or adjudication.

History: En. Sec. 6, Ch. 420, L. 1981; amd. Sec. 7, Ch. 15, L. 1985; amd. Sec. 3, Ch. 388, L. 1985; amd. Sec. 2, Ch. 599, L. 1991; amd. Sec. 3, Ch. 439, L. 1993; (5)En. Sec. 2, Ch. 369, L. 1995; amd. Sec. 20, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (1)(b) substituted "41-3-102(7)(e)" for "41-3-102(8)(d)"; and made minor changes in style. Amendment effective April 14, 1995.

Code Commissioner Correction: In (1)(b), pursuant to the authority contained in sec. 73, Ch. 18, L. 1995, the Code Commissioner substituted reference to 41-3-102(7)(e) for reference to 41-3-102(8)(d).

Effective Date: Section 5, Ch. 369, L. 1995, provided that subsection (5) is effective April 12, 1995.

Cross-References

Best interest of child, 40-4-212.

UPA — grounds for termination of father's rights, 40-6-129.

Treatment of mentally ill, Title 53, ch. 21.

41-3-610. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination to determine if the child has been permanently placed.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. If the child is not in a permanent placement at the time of the review hearing, the guardian ad litem shall submit to the court a written report with recommendations, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

History: En. Sec. 7, Ch. 420, L. 1981; amd. Sec. 4, Ch. 388, L. 1985.

41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to 41-3-610.

History: En. Sec. 8, Ch. 420, L. 1981; amd. Sec. 99, Ch. 370, L. 1987; amd. Sec. 21, Ch. 458, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 458 in (1) inserted "and Title 41, chapter 3, part 2"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Consent required for adoption, 40-8-111.

Intestate succession, Title 72, ch. 2, part 1.

41-3-612. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

History: En. Sec. 9, Ch. 420, L. 1981.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Priority of Youth Court hearings, 41-5-110.

Part 7

Montana Children's Trust Fund

Part Cross-References

Montana children's trust fund board, 2-15-2402.

Income tax deduction for contribution to state child abuse and neglect prevention program, 15-30-155.

41-3-701. Child abuse and neglect prevention program. (1) The Montana children's trust fund board, provided for in 2-15-2214, shall use the money in the children's trust fund account established by 41-3-702 to fund services and activities operated by nonprofit private or public community-based educational and service organizations, which services and activities relate solely to the prevention of child abuse and neglect.

(2) In administering the child abuse and neglect prevention program, the board shall:

(a) develop a state plan, priorities for funded services and activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities funded under this section; and

(d) adopt rules necessary to implement this section and 41-3-703 and 41-3-704.

History: En. Sec. 3, Ch. 610, L. 1985.

41-3-702. Children's trust fund account — nonsupplantation of funds. (1) There is a children's trust fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the Montana children's trust fund board, provided for in 2-15-2214, for funding services and activities under and payment of administrative costs of the child abuse and neglect prevention program provided for in 41-3-701.

(2) Funds deposited in the children's trust fund account may be used only for the program authorized in 41-3-701 and may not be used to pay the expenses of any other program or service administered in whole or in part by the department of public health and human services.

History: (1)En. Sec. 1, Ch. 610, L. 1985; (2)En. Sec. 6, Ch. 610, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 171, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Cross-References

Fund structure, 17-2-102.

41-3-703. Gifts and grants to program. The Montana children's trust fund board may accept contributions, gifts, and grants, in money or otherwise, to the child abuse and neglect prevention program. Monetary gifts, contributions, and grants must, upon receipt, be paid into the children's trust fund account established by 41-3-702.

History: En. Sec. 4, Ch. 610, L. 1985.

41-3-704. Program costs. The costs incurred by the Montana children's trust fund board in administering the child abuse and neglect prevention program must be paid for with money from the children's trust fund account established by 41-3-702. The board shall keep costs to a minimum and use existing office space, personnel, equipment, and supplies of the department of public health and human services to the extent possible.

History: En. Sec. 5, Ch. 610, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 172, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Parts 8 and 9 reserved

Part 10

Local Citizen Review Board Pilot Program Act

41-3-1001. Short title. This part may be cited as the "Local Citizen Review Board Pilot Program Act".

History: En. Sec. 1, Ch. 610, L. 1993.

41-3-1002. Interest in local review board. The office of the supreme court administrator shall solicit written indication of interest from each district court judge interested in having a local citizen review board established pursuant to this part within the jurisdiction of the district court.

History: En. Sec. 2, Ch. 610, L. 1993; amd. Sec. 1, Ch. 386, L. 1995. amd. Sec. 63, Ch. 545, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 386 in (1), in two places, and in (4) substituted "district court" for "youth court". Amendment effective July 1, 1995. The amendment in (4) was voided by Ch. 545.

Chapter 545 deleted (2) through (4) that read: "(2) (a) There is a local citizen review board screening committee. The committee is composed of the following members:

(i) a member of the house of representatives, designated by the speaker of the house;

(ii) a member of the senate, designated by the president of the senate;

(iii) a representative of the Montana judges' association, designated by the association; and

(iv) a representative of the office of the supreme court administrator, designated by the chief justice of the supreme court.

(b) The members designated pursuant to subsections (2)(a)(i) and (2)(a)(ii) must be from different political parties.

(3) The committee shall meet at a time agreeable to its members, and the members shall serve without additional compensation.

(4) The committee shall review the responses of youth court judges received pursuant to subsection (1) and shall designate judicial districts to operate a local citizen review board pilot program from among those courts expressing an interest in the program"; and made minor changes in style. Amendment effective July 1, 1995.

41-3-1003. Establishment of local citizen review board — membership. (1) Subject to the availability of funds, the district court judge of a district designated pursuant to 41-3-1002 to operate a pilot program shall establish a local citizen review board in the judicial district to review the case of each child assigned to foster care by the district court.

(2) A local citizen review board is composed of at least three and not more than five members appointed by the district court judge of a judicial district

designated pursuant to 41-3-1002. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

(3) The district court judge of a judicial district designated pursuant to 41-3-1002 shall appoint the local citizen review board according to the following guidelines:

(a) Members of a local citizen review board must be recruited from groups with special knowledge of or interest in foster care and child welfare, which may include but is not limited to adoptive parents and members of the professions of law, medicine, psychology, social work, and education.

(b) As far as practicable, members of a local citizen review board shall represent the various socioeconomic and ethnic groups of the area served.

(c) A person employed by the department of public health and human services, by a private agency regulated, certified, directed, or licensed by or contracting with the department of public health and human services, or by a district court may not serve on a local citizen review board.

(d) A member of a local citizen review board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

(4) The members of a local citizen review board must be willing to serve without compensation.

History: En. Sec. 3, Ch. 610, L. 1993; amd. Sec. 2, Ch. 386, L. 1995; amd. Sec. 173, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 386 throughout section substituted "district court" for "youth court"; and at end of (1), after "court", deleted "of the judicial district, as provided in Title 41, chapter 5". Amendment effective July 1, 1995.

Chapter 546 in (3)(c), in two places, substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

41-3-1004. Administration — training — oversight — procedures. (1) Subject to the availability of funds, the court administrator shall:

(a) establish policies and procedures for adoption by the Montana supreme court pursuant to subsection (3) for the operation of the local citizen review board;

(b) provide training programs for local citizen review board members;

(c) provide consultation services on request to the local citizen review board; and

(d) employ staff and provide for support services for the local citizen review board.

(2) The office of the supreme court administrator shall, in accordance with the direction of the supreme court, oversee the program established in this part and, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department of public health and human services and other agencies; and

(b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for children in the custody of the department of public health and human services and other agencies.

(3) The Montana supreme court shall adopt procedures that have the force of law for the administration of the local citizen review board pilot program regarding:

(a) the removal of members of the local citizen review board;

(b) the time, content, and manner in which case plans for and case progress reports on a child assigned to foster care must be provided to the local citizen review board by the department of public health and human services, other agencies, or individuals directly responsible for the care of the child;

(c) the provision of written notice of the review to the department of public health and human services, any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents, surrogate parents, mature children or their attorneys, a court-appointed attorney or special advocate of any child, any county attorney or attorney general actively involved in the case, and other interested persons. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(d) securing or excusing the presence at the review of caseworkers and other employees of the department of public health and human services or other agencies directly responsible for the care of the child; and

(e) the manner in which the local citizen review board may remove cases from review when review is not required under federal law.

History: En. Sec. 4, Ch. 610, L. 1993; amd. Sec. 1, Ch. 21, Sp. L. November 1993; amd. Sec. 3, Ch. 386, L. 1995; amd. Sec. 174, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 386 in (1), near beginning, substituted "the court administrator" for "the youth court of a judicial district designated pursuant to 41-3-1002"; in (1)(a), after "establish", deleted "and approve" and after "procedures" substituted "for adoption by the Montana supreme court pursuant to subsection (3)" for "that have the force of law"; at beginning of (1)(b) deleted "approve and"; and at beginning of (3) substituted "The Montana supreme court" for "The youth court of a judicial district designated pursuant to 41-3-1002". Amendment effective July 1, 1995.

Chapter 546 in (2)(a), (2)(b), (3)(b), (3)(c), and (3)(d) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

41-3-1005. Removal of members — grounds. Grounds for removal of a member of a local citizen review board under 41-3-1004(3) may include but are not limited to the following:

(1) nonparticipation by a local citizen review board member;

(2) a member establishing residence in a judicial district other than the judicial district in which the court the person was appointed to serve is located;

(3) violation of the confidentiality of information established under 41-3-1007; or

(4) other cause or grounds as necessary for the administration of the program.

History: En. Sec. 5, Ch. 610, L. 1993.

41-3-1006. Terms — officers — meetings. (1) A local citizen review board member shall serve at the pleasure of the appointing authority. However, if not otherwise released from service on a local citizen review board, the following provisions apply:

(a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed to serve the unexpired term.

(b) A member may be reappointed and continue to serve until a successor is appointed.

(2) A local citizen review board shall:

(a) elect annually from its membership a presiding officer and vice presiding officer to serve in the absence of the presiding officer; and

(b) meet at the nearest department of public health and human services office or another place mutually agreed to by a majority of the local citizen review board as often as it considers necessary to carry out the duties of the board.

History: En. Sec. 6, Ch. 610, L. 1993; amd. Sec. 175, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2)(b) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

41-3-1007. Confidentiality of information — penalty. (1) Before beginning to serve on a local citizen review board, each member shall swear or affirm to the court that the member will keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) A member of a local citizen review board who violates the duty imposed by subsection (1) is guilty of a misdemeanor punishable by a fine not to exceed $1,000.

History: En. Sec. 7, Ch. 610, L. 1993.

41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a local citizen review board has access to:

(a) any records of the district court that are pertinent to the case; and

(b) any records of the department of public health and human services or other agencies that would be admissible in a dispositional review hearing conducted pursuant to 41-3-406, including school records and reports of private service providers contained in the records of the department of public health and human services or other agencies.

(2) All requested records not already before the local citizen review board must be submitted by the department of public health and human services within 5 working days after receipt of a request. A local citizen review board and any staff provided for the board shall return all records and copies received from the department of public health and human services to the department within 7 working days after completion of the review.

(3) A local citizen review board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the local citizen review board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department of public health and human services. Material retained by the local citizen review boards is not subject to disclosure under the public records law.

(4) If a local citizen review board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section.

History: En. Sec. 8, Ch. 610, L. 1993; amd. Sec. 4, Ch. 386, L. 1995; amd. Sec. 176, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 386 in (1)(a) substituted "district court" for "youth court". Amendment effective July 1, 1995.

Chapter 546 in (1)(b), in two places, in (2), in two places, and in (3)(b) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

41-3-1009. Assignment of cases for review. Within 10 days of entry of the order of disposition or within 30 days of placement, whichever comes first, the district court shall assign the case of each child in foster care to a local citizen review board and forward to the board a copy of the petition and the order of disposition for each child who is within the jurisdiction of the district court and who has been placed in foster care.

History: En. Sec. 9, Ch. 610, L. 1993; amd. Sec. 5, Ch. 386, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 386 in two places substituted "district court" for "youth court". Amendment effective July 1, 1995.

41-3-1010. Review — scope — procedures — immunity. (1) Except for cases removed from review under procedures established under 41-3-1004, the local citizen review board shall review the case of each child in foster care that is assigned by the district court.

(2) The review must take place at times set by the local citizen review board. The first review may not be more than 6 months after the child is placed in foster care. Subsequent reviews must take place at least once every 6 months until the child is no longer within the jurisdiction of the district court or no longer in foster care.

(3) The district court, by rule of the court or on an individual case basis, may relieve the local citizen review board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) The local citizen review board shall review any case in which a petition to terminate parental rights has been denied as soon as practical but no later than 45 days after the denial.

(5) After reviewing each case, the local citizen review board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for and appropriateness of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives that the local citizen review board determines should be explored; and

(g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-303.

(6) Whenever a member of a local citizen review board has a potential conflict of interest in a case being reviewed, the member shall declare to the

board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the local citizen review board.

(b) If, in the judgment of the majority of the local citizen review board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The local citizen review board shall keep accurate records and retain the records on file. The local citizen review board shall send copies of its written findings and recommendations to the district court, the department of public health and human services, and other participants in the review.

(8) The local citizen review board may hold joint or separate reviews for groups of siblings.

(9) The local citizen review board may disclose to parents and their attorneys, foster parents, mature children and their attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a local citizen review board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

(10) A person who serves on a local citizen review board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112.

History: En. Sec. 10, Ch. 610, L. 1993; amd. Sec. 6, Ch. 386, L. 1995; amd. Sec. 177, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 386 throughout section substituted "district court" for "youth court"; and inserted (10) concerning the immunity from suit of a person serving in a voluntary capacity on a local citizen review board. Amendment effective July 1, 1995.

Chapter 546 in (7) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

41-3-1011. Recommendations by board. In addition to reviewing individual cases of children in foster care, a local citizen review board may make recommendations to the district court and to the department of public health and human services concerning foster care services, policies, procedures, and laws.

History: En. Sec. 11, Ch. 610, L. 1993; amd. Sec. 7, Ch. 386, L. 1995; amd. Sec. 178, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 386 substituted "district court" for "youth court". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

41-3-1012. Presence of certain employees at meetings of board. (1) Unless excused from doing so by the local citizen review board, the department of public health and human services and any other agency directly responsible for the care and placement of the child shall require the presence of any employees having knowledge of the case at board meetings.

(2) The local citizen review board may require the presence of specific employees of the department of public health and human services or any other agency or other persons at board meetings. If an employee fails to be present at the meeting, the local citizen review board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the local citizen review board.

(3) As used in this section, "presence" includes telephone participation, except that the caseworker on the case at the time of the meeting must be physically present if required.

History: En. Sec. 12, Ch. 610, L. 1993; amd. Sec. 179, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) and (2) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

41-3-1013. Court review of findings and recommendations of board. (1) Upon receipt of findings and recommendations from the local citizen review board, the district court shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. If the district court finds it appropriate, the district court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the local citizen review board to become part of the district court file; and

(c) give the local citizen review board written notice if the district court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the local citizen review board, the department of public health and human services shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. The recommendations must be implemented and the case plan modified as the department of public health and human services considers appropriate and as resources permit.

(b) give the local citizen review board written notice as soon as practicable, but in no case later than 17 days after receipt of the findings and recommendations, of the action the department of public health and human services intends to take to implement the recommendations; and

(c) include the findings and recommendations of the local citizen review board as part of the case file of the department of public health and human services.

(3) Upon its own motion or upon the request of the department of public health and human services, the local citizen review board, or any interested party, the district court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the district court, the court-appointed special advocate shall:

(a) investigate all relevant information about the case;

(b) advocate for the child, ensuring that all relevant facts are brought before the court;

(c) facilitate and negotiate to ensure that the district court, the department of public health and human services, and the child's attorney fulfill their obligations to the child in a timely fashion; and

(d) monitor all district court orders to ensure compliance and to bring to the district court's attention any change in circumstance that may require modification of the district court's order.

History: En. Sec. 13, Ch. 610, L. 1993; amd. Sec. 8, Ch. 386, L. 1995; amd. Sec. 180, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 386 throughout section substituted "district court" for "youth court"; and in (2)(b) substituted "17 days" for "7 days", after "after" substituted "receipt of the findings and recommendations, of the action" for "the review is completed if", and after "services" substituted "intends to take" for "does not intend". Amendment effective July 1, 1995.

Chapter 546 in (2), (2)(a), (2)(b), (2)(c), (3), and (3)(c) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

41-3-1014. Dispositional review hearing by district court. (1) The district court shall conduct a dispositional review hearing within 18 months after the original placement and conduct a review hearing periodically during the continuation of foster care. Unless good cause otherwise is shown, the district court shall conduct a dispositional review hearing at any time upon the request of the department of public health and human services, an agency directly responsible for care or placement of the child, a parent whose parental rights have not been terminated, an attorney for the child, a court-appointed special advocate, or a local citizen review board. The district court shall schedule the hearing as soon as possible after receiving a request.

(2) The court may order that the child or any other person be present during the hearing.

(3) The court shall notify the parties listed in subsection (1) and any other interested parties of the hearing. The notice must state the time and place of the hearing. Upon request of the district court, the department of public health and human services or other legal custodian of the child shall provide the district court with information concerning the whereabouts and identity of the parties.

(4) The district court shall enter an order within 20 days after the review hearing. If the child is in foster care, the order must include a determination of:

(a) whether the child should be returned to the parent;

(b) whether the child should be placed for adoption;

(c) whether the child should continue in foster care for a specified period; or

(d) whether, because of special needs or circumstances, the child should be placed in the permanent custody or guardianship of a responsible relative or other individual or should continue in foster care on a permanent or long-term basis.

(5) If the court determines that the child must be placed or must continue in foster care or must be placed in the custody or guardianship of a responsible relative or other individual, the district court shall enter written findings specifying why placement with parents or adoption is not appropriate. If the current placement is not expected to be permanent, the district court shall specify a projected timetable for return of the child to the child's home or for permanent placement. If the timetable set forth by the district court is not met,

the department of public health and human services shall promptly notify the district court and the parties.

(6) In the course of the dispositional review hearing, the district court may determine the adequacy of and compliance with the case plan and case progress report. In addition to other orders, the district court may:

(a) order the department of public health and human services to develop or to expand a case plan or case progress report that must be submitted within 10 days after the hearing;

(b) set a court hearing at a specific later time;

(c) direct the local citizen review board to review the status of the child prior to its next review, as provided in 41-3-1010;

(d) order the department of public health and human services or other agency directly responsible for the child to modify the care, placement, or supervision of the child; and

(e) determine whether the department of public health and human services or other agency directly responsible for the child has made reasonable efforts to reunify the family.

(7) The dispositional review hearing must be conducted in the manner provided in 41-3-406.

(8) Any decision of the district court made pursuant to the dispositional review hearing is a final order for the purposes of 41-3-406.

History: En. Sec. 14, Ch. 610, L. 1993; amd. Sec. 9, Ch. 386, L. 1995; amd. Sec. 181, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 386 throughout section substituted "district court" for "youth court". Amendment effective July 1, 1995.

Chapter 546 in (1), (3), (5), (6)(a), (6)(d), and (6)(e) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Part 11

Youth Residential Services

Part Cross-References

Place of shelter care or detention, 41-5-306.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1101. Establishment of substitute care for youth. The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide those facilities and services through local nonprofit corporations, counties, and the department of public health and human services.

History: En. Sec. 6, Ch. 465, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 434, L. 1989; amd. Sec. 182, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Duty to strengthen child welfare services, 52-2-112.

41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a licensed youth foster home.

(4) "Operator of a youth care facility" means a person owning or operating a youth care facility into which the operator takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance the operator receives money or other consideration of value and which child is neither the operator's son, daughter, nor ward, except that this part does not apply when any person accepts the care and custody of a child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of the child.

(5) "Person" means any individual, partnership, voluntary association, or corporation.

(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(8) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(9) "Youth care facility" means a facility licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, and child-care agencies.

(10) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(11) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

History: (1), (2), (5) thru (9)En. Sec. 7, Ch. 465, L. 1983; (3), (4)En. Sec. 1, Ch. 178, L. 1947; Sec. 10-520, R.C.M. 1947; redes. 10-1316 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1316; amd. Sec. 3, Ch. 297, L. 1981; amd. Sec. 16, Ch. 465, L. 1983; MCA 1981, 41-3-501; redes. 41-3-1102 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 1, Ch. 531, L. 1985; amd. Sec. 46, Ch. 609, L. 1987; amd. Sec. 1, Ch. 559, L. 1991; amd. Sec. 183, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services provided for in 2-15-2401"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Definition of community residential facility, 76-2-411.

41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, as defined in 41-5-103;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

History: En. Secs. 8, 17, Ch. 465, L. 1983; amd. Sec. 8, Ch. 15, L. 1985; amd. Sec. 1, Ch. 177, L. 1985; amd. Sec. 2, Ch. 531, L. 1985; amd. Sec. 47, Ch. 609, L. 1987; amd. Sec. 3, Ch. 434, L. 1989; amd. Sec. 1, Ch. 629, L. 1991; amd. Sec. 18, Ch. 799, L. 1991; amd. Sec. 1, Ch. 19, Sp. L. November 1993; amd. Sec. 184, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1)(a), (1)(c), and (2)(a), after "youth in need of care", deleted "youth in need of supervision, and delinquent youth"; and in (1)(f)(i) substituted "number of youth in need of care" for "breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category". Amendment effective July 1, 1995.

Cross-References

Administrative duties of Department, 52-2-111.

41-3-1104. Aftercare facilities. The department of corrections may establish, maintain, and administer youth correctional facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department of corrections.

History: En. Sec. 26, Ch. 465, L. 1983; amd. Sec. 3, Ch. 531, L. 1985; amd. Sec. 48, Ch. 609, L. 1987; amd. Sec. 185, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning substituted "department of corrections" for "department of family services" and at end, after "department", inserted "of corrections". Amendment effective July 1, 1995.

Cross-References

Establishment of juvenile correction facilities, 52-5-101.

Youth aftercare agreement, 52-5-126.

41-3-1105. Transfer of custody to private agency — reports. When the legal custody of a youth is vested in a public agency under the provisions of this part, the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary, but not less often than once each 6 months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: En. 10-1227 by Sec. 27, Ch. 329, L. 1974; R.C.M. 1947, 10-1227; MCA 1981, 41-5-804; redes. 41-3-1105 by Sec. 31(4), Ch. 465, L. 1983.

41-3-1106. Repealed. Sec. 112, Ch. 609, L. 1987.

History: En. Sec. 9, Ch. 465, L. 1983.

41-3-1107 through 41-3-1110 reserved.

41-3-1111. Renumbered 41-5-314. Sec. 15, Ch. 547, L. 1991.

41-3-1112. Repealed. Sec. 27, Ch. 458, L. 1995.

History: En. Sec. 23, Ch. 465, L. 1983; amd. Sec. 49, Ch. 609, L. 1987.

41-3-1113. Repealed. Sec. 112, Ch. 609, L. 1987.

History: En. Sec. 24, Ch. 465, L. 1983.

41-3-1114. Continuing jurisdiction of youth court. The youth court committing a delinquent youth or a youth in need of supervision to the department of corrections retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the department after notice to the youth court of original jurisdiction.

History: En. Sec. 25, Ch. 465, L. 1983; amd. Sec. 50, Ch. 609, L. 1987; amd. Sec. 186, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of corrections" for "department of family services". Amendment effective July 1, 1995.

Cross-References

Retention of jurisdiction, 41-5-205.

41-3-1115. Foster care review committee. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district;

(e) if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and

(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the youth court.

History: En. Sec. 2, Ch. 297, L. 1981; amd. Sec. 1, Ch. 201, L. 1983; MCA 1981, 41-5-807; amd. and redes. 41-3-1115 by Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 260, L. 1987; amd. Sec. 51, Ch. 609, L. 1987; amd. Sec. 16, Ch. 610, L. 1993.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Disclosure of confidential child abuse records to Foster Care Review Committee, 41-3-205.

Duty to strengthen child welfare services, 52-2-112.

41-3-1116 through 41-3-1120 reserved.

41-3-1121. Repealed. Sec. 112, Ch. 609, L. 1987.

History: En. 10-1236 by Sec. 36, Ch. 329, L. 1974; amd. Sec. 11, Ch. 100, L. 1977; amd. Sec. 12, Ch. 571, L. 1977; R.C.M. 1947, 10-1236; amd. Sec. 4, Ch. 297, L. 1981; amd. Sec. 10, Ch. 465, L. 1983; MCA 1981, 41-5-801; redes. 41-3-1121 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 9, Ch. 15, L. 1985.

41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the department of public health and human services or the department of corrections in a youth care facility, the department making the placement shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department of public health and human services for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month, the department of public health and human services or the department of corrections shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments made during the month. The county shall make reimbursement to the department within 20 days after the claim is presented.

(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 is $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) A county that was state-assumed prior to 1987, but at a later date reassumes responsibility pursuant to 53-2-811, is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

(6) The department shall conduct or arrange for the review required under 41-3-1115, or when applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R.C.M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974; amd. Sec. 22, Ch. 100, L. 1977; R.C.M. 1947, 10-1320; amd. Sec. 3, Ch. 543, L. 1979; amd. Sec. 1, Ch. 297, L. 1981; amd. Sec. 11, Ch. 465, L. 1983; MCA 1981, 41-3-104; redes. 41-3-1122 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 4, Ch. 531, L. 1985; amd. Sec. 52, Ch. 609, L. 1987; amd. Sec. 8, Ch. 561, L. 1993; amd. Sec. 17, Ch. 610, L. 1993; amd. Sec. 187, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services or the department of corrections" for "department of family services", after third "department" inserted "making the placement", and after "rate established by the department" inserted "of public health and human services"; in (2), in first sentence after "department" inserted "of public health and human services or the department of corrections"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Remedy for parental abuse, 40-6-233.

Financial responsibility — interstate placement of children, 41-4-102.

Montana Youth Court Act — place of shelter care or detention, 41-5-306.

Duty to strengthen child welfare services, 52-2-112.

41-3-1123. Repealed. Sec. 11, Ch. 696, L. 1991.

History: 41-3-405 En. 10-1313 by Sec. 9, Ch. 328, L. 1974; R.C.M. 1947, 10-1313(part); amd. Sec. 6, Ch. 567, L. 1979; 41-5-805 En. Sec. 11, Ch. 567, L. 1979; amd. Secs. 12, 13, Ch. 465, L. 1983; 41-3-405 and 41-5-805 combined by Sec. 31(3)(a), Ch. 465, L. 1983; redes.

41-3-1123 by Sec. 31(3)(c), Ch. 465, L. 1983; amd. Sec. 2, Ch. 564, L. 1983; amd. Sec. 53, Ch. 609, L. 1987.

41-3-1124. Repealed. Sec. 11, Ch. 696, L. 1991.

History: 41-3-407 En. Sec. 8, Ch. 567, L. 1979; 41-3-407 amd. Sec. 14, Ch. 465, L. 1983, and Sec. 4, Ch. 564, L. 1983; 41-5-806 En. Sec. 12, Ch. 567, L. 1979; 41-3-407 and 41-5-806 combined by Sec. 31(3)(b), Ch. 465, L. 1983; redes. 41-3-1124 by Sec. 31(3)(c), Ch. 465, L. 1983.

41-3-1125. Repealed. Sec. 11, Ch. 696, L. 1991.

History: (1)En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971; Sec. 10-525, R.C.M. 1947; redes. 10-1321 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1321, R.C.M. 1947; (2)En. 10-1313 by Sec. 9, Ch. 328, L. 1974; Sec. 10-1313, R.C.M. 1947; R.C.M. 1947, 10-1313(part), 10-1321; amd. Sec. 2, Ch. 567, L. 1979; amd. Sec. 15, Ch. 465, L. 1983; MCA 1981, 41-3-105; redes. 41-3-1125 by Sec. 31(4), Ch. 465, L. 1983.

41-3-1126. Debt to state by natural or adoptive parents — limitations. If a child has been placed in substitute care, as defined in 41-5-103 and 41-3-1102, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt for support is limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the order prevails over the agreement.

History: En. Sec. 10, Ch. 609, L. 1987.

Cross-References

Child support — orders to address health insurance, 40-4-204.

41-3-1127 through 41-3-1130 reserved.

41-3-1131. Power of nonprofit corporations to establish homes and to receive facilities and funds. Nonprofit corporations or associations may be formed or organized for the purpose of establishing youth care facilities or to provide community-based services and to receive from the department and other governmental units such services, facilities, training, and funds as the department or other governmental units may be authorized by law to provide.

History: En. Sec. 18, Ch. 465, L. 1983.

41-3-1132. Governmental contracts with nonprofit organizations. (1) The department of public health and human services and the department of corrections may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities and are authorized to expend money that is appropriated or available for those purposes. The contracts must be based on the following considerations:

(a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

(b) reasonable costs of service;

(c) appropriation level; and

(d) availability of funds.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized, at their own expense, to provide funds, materials, facilities, and services for community-based services.

History: En. Sec. 19, Ch. 465, L. 1983; amd. Sec. 188, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 near beginning of (1), after "department", inserted "of public health and human services and the department of corrections"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Public contracts generally, Title 18, ch. 1.

41-3-1133 through 41-3-1140 reserved.

41-3-1141. License required. No person shall maintain or operate a youth care facility for any child or children within the meaning of this part without first securing a license in writing from the department. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 20, Ch. 465, L. 1983; MCA 1981, 41-3-502; redes. 41-3-1141 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Requirements for visitation, inspection, and supervision, 41-4-106.

Administrative duties of Department, 52-2-111.

Child rehabilitation — duties of Department, 52-2-113.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1142. Issuance of license — authority of issuing agency. The department is hereby authorized to issue licenses to persons operating youth care facilities and to prescribe the conditions upon which such licenses shall be issued and to make such rules as it may deem advisable for the operation and regulation of such facilities for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed facilities through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules. The person operating such homes shall give to such representative such information as may be required and afford him every reasonable opportunity for observing the operation of such homes.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 21, Ch. 465, L. 1983; MCA 1981, 41-3-503; redes. 41-3-1142 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Requirements for visitation, inspection, and supervision, 41-4-106.

One-step licensing required, 50-8-102.

Administrative duties of Department, 52-2-111.

Duty to strengthen child welfare services, 52-2-112.

Child rehabilitation — duties of Department, 52-2-113.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1143. Penalty for failure to obtain license. Any person who maintains or operates a youth care facility or assists in operating or maintaining such facility without having first obtained a license in writing as hereto provided shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 178, L. 1947; Sec, 10-523, R.C.M. 1947; redes. 10-1319 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1319; amd. Sec. 22, Ch. 465, L. 1983; MCA 1981, 41-3-504; redes. 41-3-1143 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Misdemeanor defined, 45-2-101.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1144 through 41-3-1150 reserved.

41-3-1151. Respite care. (1) The department shall provide respite care, to the extent funds are available, for foster children who are:

(a) persons with developmental disabilities and either on a respite care waiting list or not eligible for respite care from another program;

(b) medically demanding because they are nonambulatory or have other special needs requiring intensive supervision or care; or

(c) suffering from severe emotional problems that are manifested in serious behavior problems.

(2) Respite care may be provided by the department on an hourly, daily, or weekly basis at a rate of payment to be determined by the department.

(3) Respite care may not be provided in an institutionalized setting except in cases involving foster children who require intensive supervision or care.

History: En. Sec. 2, Ch. 559, L. 1991; amd. Sec. 21, Ch. 255, L. 1995.

Compiler's Comments

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (1)(a), the Code Commissioner has made the change.

41-3-1152. Respite care providers — recruitment, training, and employment — qualifications. (1) The department shall either directly or by contract with public or private, nonprofit agencies recruit, train, and employ respite care providers.

(2) Respite care providers shall meet the qualifications and requirements specified in rules adopted by the department pursuant to 41-3-1103.

History: En. Sec. 3, Ch. 559, L. 1991.

CHAPTER 4

INTERSTATE PLACEMENT OF CHILDREN

Part 1 — Text of Compact

41-4-101. Enactment — provisions.
41-4-102. Financial responsibility.
41-4-103. Appropriate public authorities defined.
41-4-104. Appropriate authority in the receiving state.
41-4-105. Agreements.
41-4-106. Requirements for visitation, inspection, and supervision.
41-4-107. Certain laws not applicable.
41-4-108. Court jurisdiction retained.
41-4-109. Executive head defined.

Chapter Cross-References

Adoption of children, Title 40, ch. 8, part 1.

Department to supervise importation and exportation of children, 52-2-114.

Child adoption agencies, Title 52, ch. 2, part 4.

Subsidized adoption of hard-to-place children, Title 52, ch. 2, part 5.

Part 1
Text of Compact

41-4-101. Enactment — provisions. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) "receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) "placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) the name, date, and place of birth of the child;

(b) the identity and address or addresses of the parents or legal guardian;

(c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or his transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state

providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

(1) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 10-1401 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1401.

Cross-References

Effect of judicial record of another state, 26-3-203.

Interagency cooperation, 41-3-107.

Youth residential services, Title 41, ch. 3, part 11.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Custodial care, Title 41, ch. 5, part 8.

Administrative duties of Department, 52-2-111.

Department to assist other agencies, 52-2-116.

Child adoption agencies, Title 52, ch. 2, part 4.

Subsidized adoption, Title 52, ch. 2, part 5.

41-4-102. Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforcement of Support Act), 41-3-406, and 41-3-1122 also may be invoked.

History: En. 10-1402 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1402; amd. Sec. 18, Ch. 543, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 9, Ch. 696, L. 1991.

41-4-103. Appropriate public authorities defined. The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children, with reference to this state, means the department of public health and human services, and the department shall receive and act with reference to notices required by Article III.

History: En. 10-1403 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1403; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 189, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Administrative duties of Department, 52-2-111.

Child rehabilitation — duties of Department, 52-2-113.

Department to supervise importation and exportation of children, 52-2-114.

Department to assist other agencies, 52-2-116.

41-4-104. Appropriate authority in the receiving state. As used in Article V(1) of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state", with reference to this state, means the department of public health and human services.

History: En. 10-1404 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1404; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 190, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Cross-References

Administrative duties of Department, 52-2-111.

Child rehabilitation — duties of Department, 52-2-113.

Department to supervise importation and exportation of children, 52-2-114.

Department to assist other agencies, 52-2-116.

41-4-105. Agreements. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Article V(2) of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

History: En. 10-1405 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1405.

Cross-References

Payment for support of youth in need of care — reimbursement by county, 41-3-1122.

41-4-106. Requirements for visitation, inspection, and supervision. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under 41-3-1141, 41-3-1142, and 52-2-113 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by Article V(2) of the Interstate Compact on the Placement of Children.

History: En. 10-1406 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1406; amd. Sec. 31, Ch. 465, L. 1983.

Cross-References

Inspection by employees of other departments, 50-8-105.

41-4-107. Certain laws not applicable. The provisions of 52-2-114 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

History: En. 10-1407 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1407.

41-4-108. Court jurisdiction retained. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

History: En. 10-1408 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1408.

Cross-References

Jurisdiction and venue in abuse, neglect, and dependency cases, 41-3-103.

Youth Court — jurisdiction, Title 41, ch. 5, part 2.

41-4-109. Executive head defined. As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

History: En. 10-1409 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1409.

Cross-References

Policymaking authority and administrative powers of Governor, 2-15-103.

Powers and duties of Governor, 2-15-201.

CHAPTER 5

YOUTH COURT ACT

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41-5-313. Permitted acts — detention of youth in law enforcement facilities — criteria.

41-5-314. Taking into custody.
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Part 4 — Informal Proceeding

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41-5-805. Combined with 41-3-405, renumbered 41-3-1123.
41-5-806. Combined with 41-3-407, renumbered 41-3-1124.

41-5-807. Renumbered 41-3-1115.
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41-5-812. Creation of regions — requirements — limitation on number of regions.
41-5-813. Contracts with nonparticipating counties.
41-5-814. Responsibility for payment of detention costs.

Part 9 — District Youth Guidance Homes (Repealed. Sec. 32, Ch. 465, L. 1983)

Part 10 — State Grants for Youth Detention Services

41-5-1001. Definitions.
41-5-1002. State grants to counties.
41-5-1003. Application for grants — county plans — obligation of counties receiving grants — review and monitoring.
41-5-1004. Distribution of grants — limitation of funding — restrictions on use.
41-5-1005. Allocation of grants.
41-5-1006. Amendment of state plan.
41-5-1007. Compliance with federal requirements.
41-5-1008. Rulemaking authority.

Part 11 — Extended Jurisdiction Prosecution Act

41-5-1101. Short title.
41-5-1102. Extended jurisdiction prosecution defined — jurisdiction extended.
41-5-1103. Hearing — court designation.
41-5-1104. Disposition in extended jurisdiction prosecutions.
41-5-1105. Execution of adult sentence — exception — transfer to district court.

Chapter Cross-References

Civil liability of parent for shoplifting by minor, 27-1-718.

Crimes, Title 45.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Use of firearms by children under fourteen prohibited, 45-8-344.

Part 1
General

Part Cross-References

Destruction of property by minor — liability of parents, 40-6-237.

Youthful offenders, Title 52, ch. 5, part 1.

41-5-101. Short title. This chapter may be cited as the "Montana Youth Court Act".

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

41-5-102. Declaration of purpose. The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to prevent and reduce youth delinquency through immediate, consistent, enforceable, and avoidable consequences of youths' actions and to estab-

lish a program of supervision, care, rehabilitation, detention, competency development, community protection, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979; amd. Sec. 3, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 528 at beginning of (2) substituted "to prevent and reduce youth delinquency through immediate, consistent, enforceable, and avoidable consequences of youths' actions and to establish a program" for "to remove from youth committing violations of the law the element of retribution and to substitute therefor a program" and after "rehabilitation" inserted "detention, competency development, community protection"; in (4) substituted "fair, accurate hearing" for "fair hearing"; and made minor changes in style.

Cross-References

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Action on reporting, 41-3-202.

Abuse, neglect, or dependency proceedings, Title 41, ch. 3, part 4.

Recognition of parental control of children, 52-2-102.

41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(5) "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(7) "Delinquent youth" means a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of probation.

(8) "Department" means the department of corrections provided for in 2-15-2301.

(9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case.

(10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

(12) "Foster home" means a private residence licensed by the department for placement of a youth.

(13) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(14) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(16) "Judge", when used without further qualification, means the judge of the youth court.

(17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(18) "Necessary parties" includes the youth, the youth's parents, guardian, custodian, or spouse.

(19) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(20) "Probable cause hearing" means the hearing provided for in 41-5-303.

(21) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-811.

(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(23) "Secure detention facility" means any public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(24) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(25) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(26) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

(27) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

(28) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.

(29) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.

(30) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(31) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(32) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

(33) "Youth in need of care" has the meaning provided for in 41-3-102.

(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) continues to exhibit behavior beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision.

History: Ap.p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap.p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979; amd. Sec. 1, Ch. 233, L. 1983; amd. Sec. 2, Ch. 465, L. 1983; amd. Sec. 6, Ch. 475, L. 1987; amd. Sec. 1, Ch. 515, L. 1987; amd. Sec. 54, Ch. 609, L. 1987; amd. Sec. 1, Ch. 231, L. 1991; amd. Sec. 2, Ch. 547,

L. 1991; amd. Sec. 2, Ch. 548, L. 1991; amd. Secs. 1, 29, Ch. 799, L. 1991; amd. Sec. 191, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of corrections provided for in 2-15-2301" for "department of family services provided for in 2-15-2401"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Minors and adults defined, 41-1-101.

Youth residential services, Title 41, ch. 3, part 11.

State grants for youth detention services, Title 41, ch. 5, part 10.

Guardians of minors, Title 72, ch. 5, part 2.

41-5-104. County commissioners authorized to provide funds. (1) The county commissioners of all counties are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this chapter.

(2) Each county shall pay its portion of the costs of the youth court based:

(a) on actual costs incurred in or on behalf of the county; or

(b) if actual costs cannot be identified, on each county's proportion of the total youth court workload in the judicial district during the calendar year preceding the setting of the budget.

(3) The youth court judge shall, in January of each year, establish the proportion of the workload of the court to be attributed to each county in the ensuing budget year for purposes of any necessary application of subsection (2)(b).

History: En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239; amd. Sec. 1, Ch. 580, L. 1985.

Cross-References

District Court budget, 7-6-2351.

County levy for District Court expenses, 7-6-2511.

41-5-105. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives. The committee must be designated as a youth court committee. This committee shall meet subject to the call of the judge to confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention facilities.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240; amd. Sec. 19, Ch. 799, L. 1991.

Cross-References

Place of shelter care or detention, 41-5-306.

Appointment of probation officers, 41-5-701.

41-5-106. Order of adjudication — noncriminal. No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

History: En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235; amd. Sec. 55, Ch. 609, L. 1987.

Cross-References

Fingerprints and photographs, 41-5-304.

Communications privileged, 41-5-402.

Right to counsel, 41-5-511.

Admissibility of confession or illegally seized evidence, 41-5-514.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Youth Court records, 41-5-603.

41-5-107. Administration. The provisions of Title 41, chapter 3, part 11, govern the administration of this chapter.

History: En. Sec. 30, Ch. 465, L. 1983.

41-5-108 and 41-5-109 reserved.

41-5-110. Youth court hearings — priority. All hearings and other court appearances required under Title 41, chapter 5, must be given priority by the court and must be scheduled to be heard as expeditiously as possible.

History: En. Sec. 15, Ch. 515, L. 1987.

Part 2

Youth Court — Jurisdiction

41-5-201. Youth court judge. (1) Each judicial district in the state shall have at least one judge of the youth court. His duties shall be to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

History: En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part); amd. Sec. 1, Ch. 60, L. 1985.

Cross-References

District Court judges, Title 3, ch. 5, part 2.

Proceeding on petition, Title 41, ch. 5, part 5.

Appointment of probation officers, 41-5-701.

41-5-202. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in criminal proceedings shall apply to all proceedings under this chapter.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223; amd. Sec. 2, Ch. 515, L. 1987.

Cross-References

Disqualification and substitution of judges, Title 3, ch. 1, part 8.

41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

History: En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979; amd. Sec. 22, Ch. 626, L. 1993; amd. Sec. 2, Ch. 376, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 376 in (2) inserted "tobacco products".

Cross-References

Municipal Courts — jurisdiction, 3-6-103.

Justices' Courts — criminal jurisdiction, 3-10-303.

City Courts — concurrent jurisdiction, 3-11-102.

Jurisdiction of courts — alcohol violations, 16-6-201.

Jurisdiction and venue, 41-3-103.

Continuing jurisdiction of Youth Court, 41-3-1114.

Priority of Youth Court hearings, 41-5-110.

Criminal possession of toxic substances, 45-9-121.

41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of supervision or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law; or

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207; amd. Sec. 2, Ch. 60, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

District Court original jurisdiction, 3-5-302.

Jurisdiction and venue, 41-3-103.

Place of trial — change of venue, 46-3-111.

41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time the youth is discharged by the department; and

(3) in any event, at the time the youth reaches the age of 21 years.

History: En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208; amd. Sec. 56, Ch. 609, L. 1987.

Cross-References

Minors and adults defined, 41-1-101.

Jurisdiction and venue, 41-3-103.

Continuing jurisdiction of Youth Court, 41-3-1114.

Disposition permitted under informal adjustment, 41-5-403.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

41-5-206. Transfer to criminal court prior to prosecution. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, the youth's counsel, and the youth's parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts is not of itself grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1105.

(6) Upon order of the youth court transferring the case to the district court under subsection (5), the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must be to the department of corrections. The department shall confine the youth in whatever institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229; amd. Sec. 1, Ch. 484, L. 1981; amd. Sec. 3, Ch. 60, L. 1985; amd. Sec. 100,

Ch. 370, L. 1987; amd. Sec. 3, Ch. 515, L. 1987; amd. Sec. 57, Ch. 609, L. 1987; amd. Sec. 4, Ch. 434, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 547, L. 1991; amd. Sec. 2, Ch. 448, L. 1993; amd. Sec. 7, Ch. 438, L. 1995; amd. Sec. 192, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 438 inserted third sentence in (5) authorizing transfer of case to District Court after prosecution as provided in 41-5-208 or 41-5-1105; in (6), after "court", inserted "under subsection (5)"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (8) substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Petition — form and content, 41-5-501.

Right to counsel, 41-5-511.

Youth Court records, 41-5-603.

Commutation of sentence to state prison and transfer to juvenile correctional facility, 52-5-111.

Montana State Prison, Title 53, ch. 30, part 1.

41-5-207. Court costs and expenses. The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226; amd. Sec. 6, Ch. 363, L. 1983; amd. Sec. 1, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 6, Ch. 14, Sp. L. June 1986.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Mileage — allowance, 2-18-503.

Mileage computed by shortest traveled route, 2-18-504.

Clerk of District Court — duties relating to jurors and witnesses, 3-5-510.

Procedure in reference to witnesses' certificates, 3-5-511.

Copies of proceedings, 3-5-604.

Guardian ad litem, 25-5-301, 41-3-303.

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Right to counsel, 41-5-511.

Appointment of guardian ad litem, 41-5-512.

Remuneration of appointed counsel, 46-8-201.

41-5-208. Transfer to district court after prosecution — disposition in district court — limitation on jurisdiction. (1) To ensure continued compliance with the court's disposition under 41-5-523, at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age, the youth court judge may transfer jurisdiction to district court and order the transfer of supervisory responsibility and the youth's case files to the department.

(2) If a youth whose case has been transferred to district court under this section violates a disposition imposed under 41-5-523, the district court may impose conditions as provided under 46-18-201 through 46-18-203.

(3) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department.

(4) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age.

History: En. Sec. 6, Ch. 438, L. 1995.

Compiler's Comments

Effective Date: Section 10, Ch. 438, L. 1995, provided: "[This act] [41-5-208] is effective on passage and approval." Approved April 14, 1995.

Code Commissioner Change: In (1), the Code Commissioner deleted a reference to the former Department of Family Services transferring records to the Department of Corrections because the juvenile justice functions of both agencies were consolidated by Ch. 546, L. 1995.

Part 3
Detention Procedure

Part Cross-References

Juvenile detention center standards, 7-32-2244.

41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms of an order, a probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter must be immediately referred to the department of public health and human services.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and the youth's parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer proceeds no further unless authorized by the county attorney; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(8) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition is filed.

History: En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209; amd. Sec. 4, Ch. 515, L. 1987; amd. Sec. 58, Ch. 609, L. 1987; amd. Sec. 1, Ch. 271, L. 1989; amd. Sec. 193, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 at end of (3), after "department", inserted "of public health and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Subpoena for attendance of witnesses, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Proceeding on petition, Title 41, ch. 5, part 5.

Powers and duties of probation officers, 41-5-703.

41-5-302. Renumbered 41-3-1111. Sec. 31, Ch. 465, L. 1983.

41-5-303. Rights of youth taken into custody — questioning — hearing for probable cause — detention. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of supervision, the following requirements must be met:

(a) The youth must be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive these rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) Unless a youth has been released, a hearing must be held within 24 hours after the youth is taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause to believe that the youth is a delinquent youth or a youth in need of supervision.

(3) The probable cause hearing required under subsection (2) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing.

(4) At the probable cause hearing, the youth must be informed of his constitutional rights and his rights under this chapter.

(5) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless he:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(6) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

(7) If it is determined that there is probable cause to believe the youth is a delinquent youth or is a youth in need of supervision, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305, the youth may be placed in a detention facility or shelter care facility as provided in 41-5-306 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(8) If probable cause is not found or if a probable cause hearing is not held within the time specified in subsection (2), the youth must be immediately released from custody.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979; amd. Sec. 7, Ch. 475, L. 1987; amd. Sec. 5, Ch. 515, L. 1987; (2) thru (6) En. Sec. 1, Ch. 475, L. 1987; amd. Sec. 2, Ch. 271, L. 1989; amd. Sec. 3, Ch. 547, L. 1991.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Taking into custody, 41-5-314.

Right to counsel, 41-5-511.

Persons to be advised of rights, 41-5-515.

Waiver of counsel, 46-8-102.

41-5-304. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged is a felony.

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2); amd. Sec. 2, Ch. 484, L. 1981; amd. Sec. 6, Ch. 515, L. 1987; amd. Sec. 1, Ch. 346, L. 1991; amd. Sec. 1, Ch. 603, L. 1993; amd. Sec. 4, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 528 at end of (2)(c) substituted "act alleged is a felony" for "act alleged would constitute a felony if the act had been committed by an adult".

Cross-References

Disposition of records, 41-5-604.

41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities. (1) A youth may not be placed in a secure detention facility unless:

(a) he has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(b) he is alleged to be a delinquent youth and:

(i) he has escaped from a correctional facility or secure detention facility;

(ii) he has violated a valid court order or an aftercare agreement;

(iii) his detention is required to protect persons or property;

(iv) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(v) there are not adequate assurances that he will appear for court when required; or

(vi) he meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over him; or

(c) he has been adjudicated delinquent and is awaiting final disposition of his case.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212; amd. Sec. 1, Ch. 689, L. 1985; amd. Sec. 8, Ch. 475, L. 1987; amd. Sec. 7, Ch. 515, L. 1987; amd. Sec. 1, Ch. 610, L. 1987; amd. Sec. 3, Ch. 548, L. 1991.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Protective care, Title 41, ch. 3, part 3.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Shelter care and detention facilities, 41-5-802.

Interstate Compact on Juveniles, Title 41, ch. 6, part 1.

41-5-306. Place of shelter care or detention. (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

(a) in a licensed youth foster home as defined in 41-3-1102;

(b) in a facility operated by a licensed child welfare agency;

(c) in a licensed youth group home as defined in 41-3-1102; or

(d) under home arrest, either in the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.

(2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1) and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in:

(a) the facilities described in subsection (1);

(b) under home arrest as provided in subsection (1);

(c) a short-term detention center;

(d) a youth detention facility; or

(e) a community youth court program.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985; amd. Sec. 1, Ch. 11, Sp. L. June 1986; amd. Sec. 9, Ch. 475, L. 1987; amd. Sec. 5, Ch. 434, L. 1989; amd. Sec. 7, Ch. 105, L. 1991; amd. Sec. 5, Ch. 547, L. 1991; amd. Secs. 4, 5, Ch. 548, L. 1991; amd. Secs. 20, 21, Ch. 799, L. 1991; amd. Sec. 62, Ch. 10, L. 1993; amd. Sec. 5, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 528 inserted (3)(e) referring to community Youth Court program; and made minor changes in style.

Cross-References

Juvenile detention center standards, 7-32-2244.

Shelter care and detention facilities, 41-5-802.

State grants for youth detention services, Title 41, ch. 5, part 10.

Corrections — youthful offenders, Title 52, ch. 5, part 1.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 52-5-129.

41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention approved by the youth court. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213; amd. Sec. 7, Ch. 547, L. 1991.

Cross-References

Powers and duties of probation officers, 41-5-703.

Shelter care and detention facilities, 41-5-802.

Notice to appear, 46-6-310.

Release by officer of person arrested, 46-6-313.

Release on own recognizance, 46-9-111.

41-5-308. Repealed. Secs. 14, 16, Ch. 547, L. 1991.

History: En. Sec. 2, Ch. 475, L. 1987; amd. Sec. 6, Ch. 434, L. 1989; amd. Sec. 22, Ch. 799, L. 1991.

41-5-309. Bail. A youth placed in detention or shelter care may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth.

History: En. Sec. 3, Ch. 475, L. 1987; amd. Sec. 8, Ch. 547, L. 1991.

Cross-References

Bail, Art. II, sec. 21, Mont. Const.

41-5-310. Detention of youth in need of supervision — prohibitions. A youth alleged or found to be a youth in need of supervision may not be placed in a jail, secure detention facility, or correctional facility.

History: En. Sec. 1, Ch. 548, L. 1991.

41-5-311. Youth not to be detained in jail — exceptions — time limitations. (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that if committed by an adult would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-303.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a metropolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding.

History: En. Sec. 1, Ch. 547, L. 1991; amd. Sec. 49, Ch. 18, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 18 in (3)(a), before "metropolitan", deleted "standard"; and made minor changes in style.

41-5-312. Probable cause hearing — telephonic proceeding authorized. A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

History: En. Sec. 4, Ch. 547, L. 1991.

41-5-313. Permitted acts — detention of youth in law enforcement facilities — criteria. (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;

(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;

(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;

(d) the area is not designed or intended to be used for residential purposes; and

(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.

(2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will.

History: En. Sec. 7, Ch. 548, L. 1991.

41-5-314. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211; MCA 1981, 41-5-302; redes. 41-3-1111 by Sec. 31(4), Ch. 465, L. 1983; Sec. 41-3-1111, MCA 1989; redes. 41-5-314 by Sec. 15, Ch. 547, L. 1991.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Responsibility of providing protective services, 41-3-302.

Method of arrest, 46-6-104.

Arrest by a peace officer, Title 46, ch. 6, part 4.

Detention of youth who violates aftercare agreement, 52-5-128.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 52-5-129.

41-5-315. Repealed. Sec. 27, Ch. 799, L. 1991.

History: En. Sec. 12, Ch. 434, L. 1989.

41-5-316. Repealed. Sec. 27, Ch. 799, L. 1991.

History: En. Sec. 13, Ch. 434, L. 1989.

Part 4

Informal Proceeding

Part Cross-References

Priority of Youth Court hearings, 41-5-110.

41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public; and

(c) the youth may be a youth in need of supervision and if the probation officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing and signed by the youth and his parents or the person having legal custody of the youth.

(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

History: **En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2); amd. Sec. 2, Ch. 231, L. 1991.**

Cross-References

Youth Court Judge, 41-5-201.

Jurisdiction of the court, 41-5-203.

Preliminary investigation and disposition, 41-5-301.

Powers and duties of probation officers, 41-5-703.

41-5-402. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant. This section does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes.

History: **En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3); amd. Sec. 8, Ch. 515, L. 1987.**

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Policy to protect confidentiality in certain relations, 26-1-801.

Confidential communications made to public officer, 26-1-810.

41-5-403. Disposition permitted under informal adjustment — contributions by parents or guardians for youth's care. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and as determined by the department;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth as determined by the department;

(d) restitution upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents, legal guardian, or persons contributing to the youth's delinquency or need for supervision to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case.

(3) If the youth violates an aftercare agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under informal adjustment.

(4) If the youth is placed in substitute care requiring payment by the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981; amd. Sec. 1, Ch. 129, L. 1983; amd. Sec. 7, Ch. 363, L. 1983; amd. Sec.

4, Ch. 465, L. 1983; amd. Sec. 5, Ch. 531, L. 1985; amd. Sec. 7, Ch. 14, Sp. L. June 1986; amd. Sec. 59, Ch. 609, L. 1987; amd. Sec. 8, Ch. 105, L. 1991; amd. Sec. 3, Ch. 696, L. 1991; amd. Sec. 6, Ch. 528, L. 1995; amd. Sec. 194, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 528 in (2)(c) substituted "ability of the parents, legal guardian, or persons contributing to the youth's delinquency or need for supervision to pay" for "ability of the parents or legal guardian to pay"; and made minor changes in style.

Chapter 546 in (5), (7)(a), and (7)(b) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Destruction of property by minor — liability of parents, 40-6-237.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Retention of jurisdiction, 41-5-205.

Part 5
Proceeding on Petition

Part Cross-References

Priority of Youth Court hearings, 41-5-110.

41-5-501. Petition — form and content. A petition initiating proceedings under this chapter shall be signed by the county attorney and shall be entitled "In the Matter of ...., a youth" and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense, which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date, and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse of the youth and, if none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in detention or shelter care and, if so, the place of detention or shelter care and the time he was detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Jurisdiction of the court, 41-5-203.

Duty of court at initial appearance, 46-7-102.

Form of charge, 46-11-401.

41-5-502. Summons. (1) After a petition has been filed, summons must be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) other persons as the court may direct.

(2) The summons must:

(a) require the parties to whom it is directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is placed in detention or shelter care under any provision of this chapter pending an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in 41-5-303.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9.

History: En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216; amd. Sec. 10, Ch. 475, L. 1987; amd. Sec. 9, Ch. 515, L. 1987; amd. Sec. 9, Ch. 547, L. 1991.

Cross-References

Habeas corpus, Art. II, sec. 19, Mont. Const.; Title 46, ch. 22.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Shelter care and detention facilities, 41-5-802.

Summons, Title 46, ch. 6, part 3.

41-5-503. Service of summons. (1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-502(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217.

Cross-References

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Parent may relinquish services and custody of child, 40-6-235.

Court costs and expenses, 41-5-207.

41-5-504 through 41-5-510 reserved.

41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979; amd. Sec. 4, Ch. 484, L. 1981; amd. Sec. 60, Ch. 609, L. 1987.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Representation of child, 40-4-205.

Right to counsel, 46-8-101.

Waiver of counsel, 46-8-102.

41-5-512. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4).

Cross-References

Appointment of guardian ad litem, 25-5-301.

Parties to paternity proceedings, 40-6-110.

Guardian ad litem, 41-3-303.

41-5-513. Right to confront witnesses. In a proceeding on a petition, a party is entitled to:

(1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(2) confront and cross-examine witnesses testifying against the party; and

(3) admit or deny the allegations against the party in the petition.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5).

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

41-5-514. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth;

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence; and

(4) upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c); amd. Sec. 7, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 528 inserted (4) allowing court to order urinalysis in certain situations; and made minor changes in style.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time, Rule 403, M.R.Ev. (see Title 26, ch. 10).

Waiver of privilege by voluntary disclosure, Rule 503, M.R.Ev. (see Title 26, ch. 10).

Fingerprints and photographs, 41-5-304.

Communications privileged, 41-5-402.

Search and seizure — legality and admissibility, Title 46, ch. 5, part 1.

Testimony of person legally accountable, 46-16-213.

41-5-515. Persons to be advised of rights. Persons afforded rights under this chapter shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6).

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Rights of youth upon apprehension, 41-5-303.

Duty of court at initial appearance, 46-7-102.

41-5-516. Repealed. Sec. 16, Ch. 515, L. 1987.

History: En. 10-1219 by Sec. 19, Ch. 329, L. 1974; R.C.M. 1947, 10-1219; amd. Sec. 1, Ch. 215, L. 1979; amd. Sec. 1, Ch. 158, L. 1983.

41-5-517 through 41-5-520 reserved.

41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function is to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing must be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded, except that in the court's discretion, the general public may be excluded if the petition does not allege that the youth is delinquent.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P.

History: En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979; amd. Sec. 1, Ch. 469, L. 1981; amd. Sec. 3, Ch. 466, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 466 in (5), at end, substituted exception clause for "when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601"; and made minor changes in style. Amendment effective April 14, 1995.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

Sittings of court — when private, 3-1-313.

Copies of proceedings, 3-5-604.

Reporter's report prima facie evidence, 3-5-612.

41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the social summary or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. The evidence must include but is not limited to the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth or the youth's parents or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered in any case.

History: En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979; amd. Sec. 5, Ch. 484, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 10, Ch. 515, L. 1987; amd. Sec. 61, Ch. 609, L. 1987; amd. Sec. 10, Ch. 696, L. 1991; amd. Sec. 8, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 528 in (6)(c) substituted "ability of the parents, legal guardian, or those that contributed to the youth's delinquency or need for supervision to pay" for "ability of the parents or legal guardian to pay"; and made minor changes in style.

Cross-References

Sittings of court — when private, 3-1-313.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Disposition permitted under informal adjustment, 41-5-403.

Powers and duties of probation officers, 41-5-703.

Subpoena of witnesses, 46-11-313.

41-5-523. Disposition — sentence to correctional facility — commitment to department — placement and evaluation of youth — restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making one or more of the following dispositions:

(a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

(b) place the youth on probation;

(c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless recommended by the youth placement committee.

(d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and 46-23-506;

(e) place the youth in an in-state residence that ensures that the youth is accountable, provides for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that resources are available for placement of the youth at that residence.

(f) commit the youth to the department. In an order committing a youth to the department:

(i) the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home;

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(g) order restitution by the youth or the youth's parents;

(h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(i) require the performance of community service;

(j) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(k) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(l) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(m) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department for services outside the state of Montana without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(f), place a youth in a residential treatment facility.

(n) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(i) A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed or sentenced to a state youth correctional facility.

(ii) A youth adjudicated to be mentally ill or seriously mentally ill after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(o) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979; amd. Sec. 2, Ch. 129, L. 1983; amd. Sec. 2, Ch. 233, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 8, Ch. 363, L. 1983; amd. Sec. 5, Ch. 465, L. 1983; amd. Sec. 6, Ch. 531, L. 1985; amd. Sec. 1, Ch. 612, L. 1985; amd. Sec. 8, Ch. 14, Sp. L. June 1986; amd. Sec. 101, Ch. 370, L. 1987; amd. Sec. 11, Ch. 515, L. 1987; amd. Sec. 62, Ch. 609, L. 1987; amd. Sec. 1, Ch. 172, L. 1989; amd. Sec. 1, Ch. 210, L. 1989; amd. Sec. 7, Ch. 434, L. 1989; amd. Sec. 5, Ch. 616, L. 1989; amd. Sec. 9, Ch. 105, L. 1991; amd. Sec. 1, Ch. 201, L. 1991; amd. Sec. 1, Ch. 511, L. 1991; amd. Sec. 4, Ch. 696, L. 1991; amd. Sec. 1, Ch. 358, L. 1993; amd. Sec. 8, Ch. 438, L. 1995; amd. Sec. 195, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 438 in (1), after "making", substituted "one or more" for "any"; inserted (1)(a) authorizing Youth Court to retain jurisdiction in disposition provided under subsection (1)(b) or (1)(d); inserted (1)(c) authorizing Youth Court, subject to certain conditions, to sentence youth to state youth correctional facility and to deny eligibility for release without approval of sentencing judge until age 18, prohibiting sentencing of youth to facility unless space is available, and prohibiting limits on release unless recommended by youth placement committee; inserted (1)(d) authorizing Youth Court to require delinquent youth to register as sex offender; inserted (1)(e) authorizing Youth Court to place youth in in-state residence for accountability, rehabilitation, and public protection; in (1)(f), after "department", substituted "In an order committing a youth to the department" for "if the court determines that the youth is in need of placement in other than the youth's own home, provided that"; in (1)(f)(i), before "home", inserted "youth's own" and deleted last sentence that read: "The court shall include a determination in the order committing the youth to the department"; in (1)(m), after "department", inserted "for services outside the state of Montana"; in (1)(n)(i), after "committed", inserted "or sentenced"; in (1)(n)(ii), after "placement", deleted "by the department" and after "in" inserted "or sentencing to"; at beginning of (3), after "placed", deleted "by the department"; at end of (7) inserted references to 41-5-208 and 41-5-1105; adjusted subsection references; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in (11), (14)(a), and (14)(b) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Retention of jurisdiction, 41-5-205.

Disposition permitted under informal adjustment, 41-5-403.

Powers and duties of probation officers, 41-5-703.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Youthful offenders, Title 52, ch. 5, part 1.

Transfer of child to other facility or institution, 52-5-110.

41-5-524. Consent decree with petition. (1) At any time after the filing of a petition alleging that a youth is a delinquent youth or a youth in need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted under this section shall conform to the procedures and dispositions specified in 41-5-401 through 41-5-403 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of supervision is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which shall be reviewed by the court.

History: En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224; amd. Sec. 5, Ch. 696, L. 1991.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Liability of minor or person of unsound mind for own torts, 27-1-711.

Retention of jurisdiction, 41-5-205.

Preliminary investigation and disposition, 41-5-301.

Powers and duties of probation officers, 41-5-703.

41-5-525. Youth placement committees — composition. (1) In each judicial district, the department shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth referred to the department under 41-5-403; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under 41-5-523. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth. Members may include:

(a) two representatives of the department;

(b) a representative of the department of public health and human services;

(c) either the chief probation officer or the youth's probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the boundaries of the judicial district;

(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters;

(g) a parent or guardian; and

(h) a youth services provider.

(3) Committee members serve without compensation.

(4) Notwithstanding the provisions of 41-5-527, the committee may be convened by the department or the probation officer of the youth court.

History: En. Sec. 15, Ch. 609, L. 1987; amd. Sec. 2, Ch. 67, L. 1989; amd. Sec. 1, Ch. 403, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 403 in (1)(b), at beginning, substituted "recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of" for "committed to" and at end inserted "However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility"; in (2) deleted requirement that all members be appointed by the Department and at end inserted "persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth. Members may include"; in (2)(a) substituted "two representatives" for "a representative"; in (2)(b) substituted "the department of social and rehabilitation services" for "a county department of public welfare"; in (2)(c) substituted "either the chief probation officer or the youth's" for "a youth"; inserted (2)(g) that read: "(g) a parent or guardian"; inserted (2)(h) that read: "(h) a youth services provider"; and inserted (4) allowing the Department or the probation officer to convene the committee. Amendment effective April 13, 1995.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Cross-References

Educational goals and duties — recognition of Indian cultural heritage, Art. X, Sec. 1(2), Mont. Const.

41-5-526. Duties of the youth placement committee. A youth placement committee shall:

(1) review all information relevant to the placement of a youth referred or committed to the department;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) consider options for the financial support of the youth;

(5) recommend in writing to the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at a state youth correctional facility, or with a parent, other family member, or guardian.

(6) review temporary and emergency placements as required under 41-5-528; and

(7) conduct placement reviews at least semiannually and at other times as requested by the department.

History: En. Sec. 16, Ch. 609, L. 1987; amd. Sec. 1, Ch. 399, L. 1989; amd. Sec. 2, Ch. 403, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 403 inserted (4) that read: "(4) consider options for the financial support of the youth"; in (5), in second sentence, substituted "a state youth correctional facility" for "Mountain View school, at Pine Hills school"; and in (7) inserted language to provide that reviews be conducted at least semiannually. Amendment effective April 13, 1995.

41-5-527. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department. (1) Prior to commitment of a youth to the department pursuant to 41-5-523, a youth placement committee must be convened. The committee shall submit in writing to the department and to the youth court judge its primary and alternative recommendations for placement of the youth.

(2) If the department accepts either of the committee's recommendations, it shall promptly notify the committee in writing.

(3) If the department rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(4) Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement.

History: En. Sec. 17, Ch. 609, L. 1987; amd. Sec. 2, Ch. 399, L. 1989; amd. Sec. 3, Ch. 403, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 403 substituted current text concerning recommendation and placement for former text that read: "(1) When a youth has been referred or committed to the department for placement, the department shall notify the appropriate youth placement committee. The committee shall submit in writing to the department its recommendation for placement of the youth. The committee shall send a copy of the recommendation to the appropriate youth court judge.

(2) If the department accepts the committee's recommendation, the youth must be placed according to the recommendation.

(3) If the department rejects the committee's recommendation, it shall promptly notify the committee in writing of the reasons for rejecting the recommendation. The depart-

ment shall send a copy of the notice to the appropriate youth court judge.

(4) After receiving a notice under subsection (3), the committee shall submit in writing to the department a recommendation for an alternative placement of the youth.

(5) If the department accepts the committee's recommendation for alternative placement, the youth must be placed according to the recommendation.

(6) If the department rejects the committee's recommendation for alternative placement, the department shall promptly notify the committee in writing of the reasons for rejecting the recommendation and shall determine an appropriate placement for the youth. The youth must be placed as determined by the department." Amendment effective April 13, 1995.

41-5-528. Temporary and emergency placements — limit. (1) A temporary placement of a youth in a shelter care facility or an emergency placement of a youth in a youth care facility is exempt from the requirements of 41-5-527.

(2) If a temporary or emergency placement of a youth continues for 45 or more days, the department shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the department in accordance with 41-5-527.

History: En. Sec. 18, Ch. 609, L. 1987.

41-5-529. Confidentiality of youth placement committee meetings and records. (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department.

History: En. Sec. 19, Ch. 609, L. 1987.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

41-5-530. Parental contributions account — allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523, or 41-5-524 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103.

History: En. Sec. 6, Ch. 696, L. 1991; amd. Sec. 196, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (3), after "department", inserted "of public health and human services". Amendment effective July 1, 1995.

41-5-531. Posttrial motions. All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7).

Cross-References

Motion for new trial, Title 46, ch. 16, part 7.

Appellate review of legal sentences, Title 46, ch. 18, part 9.

Postconviction hearing, Title 46, ch. 21.

41-5-532. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225.

Cross-References

Supreme Court — appellate jurisdiction, 3-2-203.

Appeals, Title 46, ch. 20.

41-5-533. Probation revocation — disposition. (1) A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation shall be screened, reviewed, and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228.

Cross-References

Petition — form and content, 41-5-501.

Powers and duties of probation officers, 41-5-703.

Arrest when violations of probation alleged, 46-23-1012.

Action of court after arrest, 46-23-1013.

Report to and action by the Board, 46-23-1025.

Part 6

Confidentiality of Proceedings — Records

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

41-5-601. Repealed. Sec. 8, Ch. 466, L. 1995.

History: En. 10-1241 by Sec. 41, Ch. 329, L. 1974; R.C.M. 1947, 10-1241; amd. Sec. 2, Ch. 469, L. 1981; amd. Sec. 10, Ch. 15, L. 1985; amd. Sec. 1, Ch. 462, L. 1987; amd. Sec. 12, Ch. 515, L. 1987.

41-5-602. Repealed. Sec. 8, Ch. 466, L. 1995.

History: En. 10-1230 by Sec. 30, Ch. 329, L. 1974; amd. Sec. 10, Ch. 100, L. 1977; R.C.M. 1947, 10-1230; amd. Sec. 3, Ch. 469, L. 1981; amd. Sec. 63, Ch. 609, L. 1987; amd. Sec. 3, Ch. 510, L. 1991; amd. Sec. 6, Ch. 655, L. 1991.

41-5-603. Youth court and department records. (1) Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-604.

(2) Social, medical, and psychological records, predispositional studies, supervision records of probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203; and

(i) persons allowed access to the records under 45-5-624(7).

(3) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

(4) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

History: En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979; amd. Sec. 13, Ch. 515, L. 1987; amd. Sec. 64, Ch. 609, L. 1987; amd. Sec. 4, Ch. 510, L. 1991; amd. Sec. 7, Ch. 655, L. 1991; amd. Sec. 4, Ch. 466, L. 1995; amd. Sec. 4, Ch. 481, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 466 in (1), at beginning, inserted exception clause, after "all youth court" deleted "and youth court-related department", after "records" inserted "on file with the clerk of court", after "including" deleted "social, medical, and psychological records", substituted "petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees" for "predispositional studies, and supervision records of probationers", before "inspection" inserted "public", and substituted "until the records are sealed under 41-5-604" for "prior to the sealing of the records"; in (2), in introductory clause, inserted "Social, medical, and psychological records, predispositional studies, supervision records of probationers, and any report, charge, or allegation that is not adjudicated pursuant to this chapter are open"; deleted former (3) and (4) that provided restrictions on public inspection (see 1995 Session Law for text); adjusted subsection references; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 481 inserted (2)(i) regarding persons allowed access under 45-5-624(7); and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Copies of proceedings, 3-5-604.

Confidential communications made to public officer, 26-1-810.

Presentence investigation, 46-18-111.

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

41-5-604. Disposition of records. (1) Except as provided in subsections (2) and (5), youth court records and law enforcement records pertaining to a youth covered by this chapter must be physically sealed 3 years after supervision for an offense ends. The records may be unsealed if a new offense is committed.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records and files not exempt from sealing under subsection (5) must be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, an agency or department that has in its possession copies of the sealed records shall also seal or destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(4) This section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section do not apply to fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, or records referred to in 45-5-624(7).

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981; amd. Sec. 14, Ch. 515, L. 1987; amd. Sec. 8, Ch. 251, L. 1995; amd. Sec. 10, Ch. 466, L. 1995; amd. Sec. 5, Ch. 481, L. 1995; amd. Sec. 9, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendments — Coordination Instruction — Composite Section: Chapter 251 in (1), after "fingerprints", inserted "DNA records"; and made minor changes in style. Amendment effective March 27, 1995. The amendment in (1) was rendered void by sec. 10, Ch. 466.

Section 5, Ch. 466, L. 1995, amended this section. Chapter 466 also contained a coordination instruction in sec. 10 that provided that if both Ch. 466 and House Bill No. 551 are passed and approved and if both include a section that amends 41-5-604, then 41-5-604 is to read as provided in the coordination instruction. House Bill No. 551 was approved as Ch. 251, L. 1995. In accordance with the coordination instruction, the amendments to this section contained in sec. 5, Ch. 466, L. 1995, are therefore void (see 1995 Session Law for text). Section 10, the coordination instruction, amended 41-5-604 as follows: in (1) inserted exception clause and after "law enforcement records" deleted "except fingerprints and photographs"; in (2), after "files", inserted "not exempt from sealing under subsection (5)"; in (5) inserted "fingerprints, DNA records, photographs" and at end substituted "in any case in which the youth did not fulfill all requirements of the court's judgment or disposition" for "directly related to an offense to which access must be allowed under 41-5-601"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 481 in (5), at end, inserted "or records referred to in 45-5-624(7)"; and made minor changes in style.

Chapter 528 in (1), at end of first sentence, substituted "sealed 3 years after supervision for an offense ends" for "sealed when the youth reaches the age of 18 years" and inserted second sentence allowing records to be unsealed; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Minors and adults defined, 41-1-101.

Continuing jurisdiction of Youth Court, 41-3-1114.

Records and reports of traffic convictions, Title 61, ch. 11.

41-5-605. Youth court records — public record. Except as provided in 41-5-603, all youth court records on file with the clerk of court related to a youth who is alleged or found to be a youth in need of supervision or a delinquent youth are a public record until the record is sealed under 41-5-604.

History: En. Sec. 1, Ch. 466, L. 1995.

Compiler's Comments

Effective Date: Section 11, Ch. 466, L. 1995, provided that this section is effective April 14, 1995.

Part 7
Probation Officers

Part Cross-References

Probation, parole, and clemency, Title 46, ch. 23.

Cases of juveniles excluded, 46-23-102.

41-5-701. Appointment of probation officers. The youth court judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this chapter. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. No person while serving as a law enforcement officer may be appointed or perform the duties of a full-time or part-time probation officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979.

Cross-References

Youth Court committee, 41-5-105.

Youth Court Judge, 41-5-201.

41-5-702. Qualifications of probation officers. (1) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-703; or

(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation

officer, provided preference must be given to persons with the qualifications set forth in subsection (1).

(3) Each person appointed as a chief probation officer or probation officer under this section or as a deputy probation officer under 41-5-705 must obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers in a program or course conducted by the department of justice or approved by the board of crime control under 41-5-706.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2); amd. Sec. 1, Ch. 544, L. 1987; amd. Sec. 2, Ch. 205, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 205 in (3), after "must", deleted "through a source approved by his employer" and at end inserted language requiring training in program or course conducted by Department or approved by Board of Crime Control under 41-5-706; and made minor changes in style.

Cross-References

Qualifications of probation and parole officers, 46-23-1003.

41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(2) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5).

Cross-References

Preliminary investigation and disposition, 41-5-301.

Dispositional hearing, 41-5-522.

Consent decree with petition, 41-5-524.

Supervision on probation, 46-23-1011.

Arrest when violations of parole alleged, 46-23-1012.

41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a salary specified by the court, depending on the formal training and experience of each respective officer, but such salary may be no lower than $17,000 a year and no higher than $22,000 a year. In addition to such salary, the court shall, on or before July 1 of each year, adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to his annual salary on July 1 of that year an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1 of each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the cost allocation established under 41-5-104, except where such officer is appointed for one county, such county shall pay the entire salary.

(2) In addition to the compensation provided in subsection (1), each chief probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the chief probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979; amd. Sec. 1, Ch. 534, L. 1981; amd. Sec. 1, Ch. 332, L. 1983; amd. Sec. 2, Ch. 580, L. 1985.

Cross-References

District Court budget, 7-6-2351.

Youth Court Judge, 41-5-201.

41-5-705. Deputy probation officers — salary. (1) The judge having jurisdiction of juvenile matters may also appoint such additional persons, giving preference to persons having the qualifications suggested for appointment as the chief probation officer, to serve as deputy probation officers as the judge deems necessary, their salaries to be fixed by the judge. Such salaries shall not exceed 90% or be less than 60% of the salary of the chief probation officer excluding longevity payments provided in 41-5-704.

(2) In addition to such salary, each deputy probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) If a deputy probation officer is promoted to chief probation officer, his salary may not be decreased by the appointment. He shall retain all longevity allowances earned during his service as a deputy.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979; amd. Sec. 2, Ch. 332, L. 1983.

Cross-References

District Court budget, 7-6-2351.

Youth Court Judge, 41-5-201.

41-5-706. Juvenile probation officer training. (1) The department of justice may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the board.

(3) A juvenile probation officer is entitled to the officer's salary while attending a program or training course and must be paid, by the district court,

expenses as provided in 2-18-501. The court shall also pay any program or course registration fee.

(4) The board may adopt rules to implement this section.

History: En. Sec. 1, Ch. 205, L. 1995.

Part 8
Custodial Care

41-5-801. Renumbered 41-3-1121. Sec. 31, Ch. 465, L. 1983.

41-5-802. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility may be used to provide an appropriately physically restricting setting for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(3) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner.

(6) A shelter care facility may be operated in conjunction with a youth detention facility.

History: En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237; amd. Sec. 11, Ch. 475, L. 1987; amd. Sec. 8, Ch. 434, L. 1989; amd. Sec. 23, Ch. 799, L. 1991; amd. Sec. 10, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 528 in (2), after "A shelter care facility", deleted "must be physically unrestricting and" and substituted "provide an appropriately physically restricting setting" for "provide shelter care"; in (3) substituted "must be physically separated" for "must be separate and apart"; and in (5), after "manner", deleted "and be as nearly as possible like a family home".

Cross-References

District Court budget, 7-6-2351.

County levy for District Court expenses, 7-6-2511.

Youth Court Judge, 41-5-201.

Detention and shelter care of youth, 41-5-305.

Place of shelter care or detention, 41-5-306.

41-5-803. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R.C.M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974; amd. Sec. 8, Ch. 450, L. 1977; R.C.M. 1947, 10-1238; amd. Sec. 10, Ch. 567, L. 1979.

41-5-804. Renumbered 41-3-1105. Sec. 31, Ch. 465, L. 1983.

41-5-805. Combined with 41-3-405, renumbered 41-3-1123. Sec. 31, Ch. 465, L. 1983.

41-5-806. Combined with 41-3-407, renumbered 41-3-1124. Sec. 31, Ch. 465, L. 1983.

41-5-807. Renumbered 41-3-1115. Sec. 31, Ch. 465, L. 1983.

41-5-808. Repealed. Sec. 27, Ch. 799, L. 1991.

History: En. Sec. 4, Ch. 475, L. 1987; amd. Sec. 58, Ch. 83, L. 1989; amd. Sec. 9, Ch. 434, L. 1989.

41-5-809. Rules. The department shall adopt rules governing licensing procedures for regional and county detention facilities.

History: En. Sec. 5, Ch. 475, L. 1987; amd. Sec. 15, Ch. 475, L. 1987; amd. Sec. 10, Ch. 434, L. 1989; amd. Sec. 24, Ch. 799, L. 1991.

41-5-810. County responsibility to provide youth detention services. (1) Each county shall provide services for the detention of youth in facilities separate from adult jails.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-809.

History: En. Sec. 2, Ch. 799, L. 1991.

41-5-811. Regional detention facilities. (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-810 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility;

(d) include the applicable per diem charge for the detention of youths in the facility, as well as the basis for any adjustment in the charge; and

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility.

History: En. Sec. 3, Ch. 799, L. 1991; amd. Sec. 11, Ch. 528, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 528 at end of (4), after "facility", deleted "must be for a term of not less than 10 years. In addition, the contracts".

41-5-812. Creation of regions — requirements — limitation on number of regions. (1) Counties that wish to establish a regional detention facility shall form a youth detention region.

(2) Each youth detention region must:

(a) be composed of contiguous counties participating in the regional detention facility; and

(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.

(3) There may be no more than five youth detention regions established in the state at any one time.

History: En. Sec. 4, Ch. 799, L. 1991.

41-5-813. Contracts with nonparticipating counties. Counties participating in a regional detention facility may enter into agreements with nonparticipating counties to provide services for the detention of youth. The costs of services must be based upon a per diem charge for the detention of youth in the facility.

History: En. Sec. 5, Ch. 799, L. 1991.

41-5-814. Responsibility for payment of detention costs. Absent a contract or agreement between counties, all costs for the detention of a youth in a county or regional detention facility, including medical costs incurred by the youth during detention, must be paid by the county at whose instance the youth is detained.

History: En. Sec. 6, Ch. 799, L. 1991.

Part 9

District Youth Guidance Homes (Repealed. Sec. 32, Ch. 465, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

41-5-901. En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R.C.M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974; amd. Sec. 12, Ch. 100, L. 1977; amd. Sec 14, Ch. 571, L. 1977; R.C.M. 1947, 10-1242.

41-5-902. En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R.C.M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974; amd. Sec. 16, Ch. 100, L. 1977; R.C.M. 1947, 10-1251.

41-5-903. En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R.C.M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974; R.C.M. 1947, 10-1244.

41-5-904 through 41-5-910 reserved.

41-5-911. En. Sec. 8, Ch. 427, L. 1971; Sec. 10-1108, R.C.M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974; amd. Sec. 15, Ch. 100, L. 1977; amd. Sec. 9, Ch. 450, L. 1977; R.C.M. 1947, 10-1249.

41-5-912. En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R.C.M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974; R.C.M. 1947, 10-1245.

41-5-913. En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R.C.M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974; amd. Sec. 17, Ch. 100, L. 1977; R.C.M. 1947, 10-1252.

41-5-914 through 41-5-920 reserved.

41-5-921. En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R.C.M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974; R.C.M. 1947, 10-1247; amd. Sec. 1, Ch. 141, L. 1981.

41-5-922. En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R.C.M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974; R.C.M. 1947, 10-1250.

41-5-923. En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R.C.M. 1947; amd. and redes.

10-1246 by Sec. 46, Ch. 329, L. 1974; amd. Sec. 13, Ch. 100, L. 1977; R.C.M. 1947, 10-1246.

41-5-924. En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R.C.M. 1947; amd. and redes. 10-1248 by Sec. 48, Ch. 329, L. 1974; amd. Sec. 14, Ch. 100, L. 1977; R.C.M. 1947, 10-1248.

Part 10

State Grants for Youth Detention Services

41-5-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricting setting.

(2) "Board" means the board of crime control provided for in 2-15-2006.

(3) "County" means a county, city-county consolidated government, or a youth detention region created pursuant to 41-5-812.

(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of his case.

(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1003.

(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1002.

History: En. Sec. 7, Ch. 799, L. 1991.

41-5-1002. State grants to counties. (1) Within the limits of available funds, the board shall provide grants in accordance with 41-5-1003 through 41-5-1005 to assist counties in establishing and operating youth detention services, including but not limited to youth detention facilities, short-term detention centers, holdovers, attendant care, home detention, and programs for the transportation of youth to regional detention facilities.

(2) Grants available under subsection (1) consist of state appropriations and federal funds received by the board for the purpose of administering 41-5-1001 through 41-5-1005.

History: En. Sec. 8, Ch. 799, L. 1991.

41-5-1003. Application for grants — county plans — obligation of counties receiving grants — review and monitoring. (1) In order to receive funds under 41-5-1002, a county shall submit an application to the board in a manner and form prescribed by the board.

(2) The application must include a written plan for providing youth detention services in the county. Each plan must include:

(a) an assessment of the need for services;

(b) a description of services to be provided, including alternatives to secure detention;

(c) the estimated number of youth who will receive services;

(d) criteria for the placement of youth in secure detention; and

(e) a budget describing proposed expenditures for youth detention services.

(3) If the application and plan are approved by the board, the county may receive a grant in the amount provided for in 41-5-1004.

(4) As a condition of receiving funds under 41-5-1002, each county shall, within a reasonable period of time, comply or substantially comply with state law and policies contained in the Montana Youth Court Act concerning the detention and placement of youth.

(5) The board shall periodically review and monitor counties receiving grants under 41-5-1002 to assure compliance or substantial compliance with the Montana Youth Court Act, as required under subsection (4). If, after notice and fair hearing, the board determines that a county is not in compliance or substantial compliance with the Montana Youth Court Act, the board shall terminate the grant to the county.

History: En. Sec. 9, Ch. 799, L. 1991.

41-5-1004. Distribution of grants — limitation of funding — restrictions on use. (1) The board shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Based on funding available after the board has funded block grants under subsection (2), the board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system has placed considerable financial strain on a county's resources, award grants to eligible counties to fund up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular case or cases that created the hardship expenditure for which the hardship grant is requested.

(4) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-523.

History: En. Sec. 10, Ch. 799, L. 1991; amd. Sec. 1, Ch. 8, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 8 inserted (3) allowing the award of a grant for youth detention services to an eligible county in a case of extreme hardship. Amendment effective July 1, 1995.

41-5-1005. Allocation of grants. (1) Each fiscal year, the board shall allocate grants under 41-5-1002 for distribution to eligible counties based upon:

(a) the relative population of youth residing in geographical areas of the state, as determined by the board; and

(b) the estimated cost of youth detention services in each county eligible for funding under 41-5-1002.

(2) A county is not automatically entitled to receive a grant from funds available under 41-5-1002.

History: En. Sec. 11, Ch. 799, L. 1991.

41-5-1006. Amendment of state plan. The board shall amend the state plan required under section 223 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5633), to reflect the contents of approved county plans for providing youth detention services.

History: En. Sec. 12, Ch. 799, L. 1991.

41-5-1007. Compliance with federal requirements. The board shall administer federal funds available under section 222 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5632), in compliance with the requirements of 42 U.S.C. 5633(a)(21) and 42 U.S.C. 5674.

History: En. Sec. 13, Ch. 799, L. 1991.

41-5-1008. Rulemaking authority. The board may adopt rules necessary to implement the provisions of 41-5-103(13), 41-5-812, and 41-5-1001 through 41-5-1008.

History: En. Sec. 14, Ch. 799, L. 1991.

Part 11

Extended Jurisdiction Prosecution Act

Part Compiler's Comments

Effective Date: Section 10, Ch. 438, L. 1995, provided: "[This act] [Title 41, ch. 5, part 11] is effective on passage and approval." Approved April 14, 1995.

41-5-1101. Short title. This part may be cited as the "Extended Jurisdiction Prosecution Act".

History: En. Sec. 1, Ch. 438, L. 1995.

41-5-1102. Extended jurisdiction prosecution defined — jurisdiction extended. (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult is an extended jurisdiction prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the prosecutor requests that the case be designated an extended jurisdiction prosecution, a hearing is held under 41-5-1103, and the court designates the case as an extended jurisdiction prosecution; or

(b) the alleged offense is transferable under 41-5-206 or the youth was at least 12 years of age at the time of the alleged offense and allegedly used a weapon.

(2) To enforce the court's disposition in an extended jurisdiction prosecution, the court shall retain jurisdiction until the case is transferred to district court under this part or jurisdiction is terminated under the provisions of 41-5-205.

History: En. Sec. 2, Ch. 438, L. 1995.

41-5-1103. Hearing — court designation. (1) When a prosecutor requests that a case be designated as an extended jurisdiction prosecution under 41-5-1102(1)(a), the court shall hold a hearing to consider the request.

(2) The hearing must be held within 30 days of the filing of the request unless good cause is shown by the prosecutor or the youth that the hearing should be held later, in which case the hearing must be held within 90 days of the request.

(3) If the prosecutor shows by clear and convincing evidence that designating the case as an extended jurisdiction prosecution serves public safety, the court may, within 15 days after the hearing, designate the case as an extended jurisdiction prosecution.

(4) An order designating a case as an extended jurisdiction prosecution is not appealable until after disposition under 41-5-1104.

History: En. Sec. 3, Ch. 438, L. 1995.

41-5-1104. Disposition in extended jurisdiction prosecutions. (1) If a youth in an extended jurisdiction prosecution pleads guilty to or is found guilty of an offense described in 41-5-1102(1)(b), the court shall:

(a) impose one or more juvenile dispositions under 41-5-523; and

(b) impose an adult criminal sentence, the execution of which must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense. If the youth violates the conditions of the stay or commits a new offense, the adult criminal sentence must be executed as provided in 41-5-1105.

(2) Except as provided in subsection (3), if a youth in an extended jurisdiction prosecution is convicted of an offense not described in 41-5-1102(1)(b), the court shall adjudicate the youth delinquent and order a disposition under 41-5-523.

(3) If a youth in an extended jurisdiction prosecution pleads guilty to an offense not described in 41-5-1102(1)(b), the court may impose, with the youth's consent, a disposition provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the court shall impose a disposition as provided under subsection (2).

History: En. Sec. 4, Ch. 438, L. 1995.

41-5-1105. Execution of adult sentence — exception — transfer to district court. (1) If a court has imposed on a youth an adult criminal sentence stayed under 41-5-1104(1)(b) and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody and revoke the stay. The court shall notify the youth in writing of the reasons for the revocation.

(2) (a) If the youth challenges the reasons for the revocation, the court shall hold a summary hearing at which the youth is entitled to be heard and represented by counsel.

(b) After the hearing, if the court finds by a preponderance of the evidence presented that the conditions of the stay have been violated, the court shall:

(i) order execution of the sentence imposed under 41-5-1104(1)(b); or

(ii) continue the stay and make written findings regarding the mitigating factors that justify continuing the stay.

(3) If the stay of an adult sentence is revoked under this section, jurisdiction must be transferred to district court for execution of the sentence, subject to 41-5-206(8) and (9).

History: **En. Sec. 5, Ch. 438, L. 1995.**

CHAPTER 6

INTERSTATE COMPACT ON JUVENILES

Part 1 — Text of Compact

41-6-101. Enactment — provisions.
41-6-102. Juvenile compact administrator.
41-6-103. Supplementary agreements.
41-6-104. Financial arrangements.
41-6-105. Responsibilities of courts, state departments, agencies, and officers.
41-6-106. Additional procedures not precluded.

Part 1

Text of Compact

41-6-101. Enactment — provisions. The Interstate Compact on Juveniles as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I. Findings and Purposes

(1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(a) cooperative supervision of delinquent juveniles on probation or parole;

(b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.

(2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies

All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions

For the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways

(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the

court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

Article V. Return of Escapees and Absconders

(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while

on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.

Article VI. Voluntary Return Procedure

Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees

(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on

probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.

(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs

(1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of cost or responsibilities therefor.

(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or

other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.

Article IX. Detention Practices

To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.

Article X. Supplementary Agreements

The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;

(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid

Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Article XII. Compact Administrators

The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation

This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.

Article XV. Severability

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Article XVI. Rendition

(1) This amendment shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of Articles V and VI of this compact shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of this compact shall be forwarded by the judge of the court in which the petition has been filed.

History: En. Sec. 1, Ch. 76, L. 1967; R.C.M. 1947, 10-1001; amd. Sec. 1, Ch. 436, L. 1989.

Cross-References

Right to counsel, 41-5-511.

Appointment of guardian ad litem, 41-5-512.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Probation revocation — disposition, 41-5-533.

Circumstances in which a peace officer may make an arrest, 46-6-210.

Uniform Criminal Extradition Act, Title 46, ch. 30.

Department to supervise importation and exportation of children, 52-2-114.

Commitment expenses — arrangement for transportation, 52-5-109.

Apprehension and return of child leaving juvenile facility without permission, 52-5-113.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 52-5-129.

41-6-102. Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History: En. Sec. 2, Ch. 76, L. 1967; R.C.M. 1947, 10-1002.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

Powers and duties of Governor, 2-15-201.

41-6-103. Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: En. Sec. 3, Ch. 76, L. 1967; R.C.M. 1947, 10-1003.

41-6-104. Financial arrangements. The compact administrator, subject to the approval of the department of administration, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History: En. Sec. 4, Ch. 76, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 10-1004.

Cross-References

Authorization for disbursements — submission of claim to Department of Administration, 17-8-201.

41-6-105. Responsibilities of courts, state departments, agencies, and officers. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History: En. Sec. 5, Ch. 76, L. 1967; R.C.M. 1947, 10-1005.

41-6-106. Additional procedures not precluded. In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History: En. Sec. 6, Ch. 76, L. 1967; R.C.M. 1947, 10-1006.

Cross-References

Uniform Criminal Extradition Act, Title 46, ch. 30.

CHAPTER 7

MONTANA FAMILY POLICY ACT

Part 1 — Family Policy Act

41-7-101. Short title.
41-7-102. Policy and guiding principles.

Part 1

Family Policy Act

41-7-101. Short title. Section 41-7-102 and this section may be cited as the "Montana Family Policy Act".

History: En. Sec. 1, Ch. 98, L. 1993.

41-7-102. Policy and guiding principles. (1) It is the policy of the state of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children.

(2) The following principles must guide the actions of state government, state agencies, and agents of the state that serve children and families:

(a) Family support and preservation must be guiding philosophies when the state, state agencies, or agents of the state plan or implement services for children or families. The state shall promote the establishment of a range of services to children and families, including the following components:

(i) supporting families toward healthy development by providing a community network that offers a range of family support services, activities, and programs designed to promote family well-being, with services that include prenatal care, parenting education, parent aides, and visiting nurses; early childhood screening and developmental services; child care; and family recreation;

(ii) assisting vulnerable families before crises emerge by providing specialized services to strengthen and preserve families experiencing problems before they become acute and by providing early intervention and family support services, such as respite care, health and mental health services, and home-based rehabilitation services linked to services in subsection (2)(a)(i);

(iii) protecting and caring for children in crisis by providing intensive services to protect children who have suffered or are at risk of suffering serious harm from child abuse and neglect, by providing care for children at risk of out-of-home placement for emotional disturbances or behavior problems, and by providing family support services to ensure that reasonable efforts are made to safely maintain children in their own homes or to provide temporary or permanent care for children who are removed from their families. These services include family-based services to avoid removal from the home whenever possible and to provide out-of-home care, reunification services, adoption services, and long-term substitute care.

(b) To maximize resources and establish a range of services driven by the needs of families rather than by a predetermined array of categorical services, the state, state agencies, and agents of the state shall work toward a system of comprehensive and coordinated services to children and families through joint agency planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that promote more effective support for families.

(c) Needed services to children and families should be provided as close as possible to the home community. The state, state agencies, and agents of the state shall encourage community planning and collaboration. State agencies shall cooperate to support collaborative programs.

(d) The state encourages all sectors of society to participate in building the community capacity to meet the needs of children and families.

(3) The family policy objectives described in this section are intended to guide the state's efforts to provide services to children and families. This section may not be construed to require a service or a particular level of service or to grant a right of action to enforce this section or other law.

History: En. Sec. 2, Ch. 98, L. 1993.

TITLES 42 AND 43

RESERVED

TITLE 44

LAW ENFORCEMENT

Ch.
1. Highway Patrol.
2. Investigation, Communication, and Identification.
3. Montana Forensic Science System Act.
4. Miscellaneous Functions of Department of Justice.
5. Criminal Justice Information.
6. DNA Records.
Chapters 7 through 9 reserved.
10. Law Enforcement Academy.
11. Mutual Assistance — Rights of Assisting Officers.
12. Seizures Related to Controlled Substances.
13. Special Law Enforcement Assistance Funding.

CHAPTER 1

HIGHWAY PATROL

Part 1 — General Provisions

44-1-101. Creation of highway patrol.
44-1-102. General duties of department of justice.
44-1-103. Authority to make rules.
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44-1-105. Department of justice to furnish equipment.
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Part 2 — Highway Patrol Chief

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44-1-302. Powers relating to supervisory personnel.
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44-1-401. Qualifications of patrol officers.
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Part 5 — Salaries and Expenses

44-1-501. Payment of expenses.
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44-1-504 through 44-1-510 reserved.
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44-1-514. Discontinuation of salary benefit when retirement allowance granted.
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44-1-603 through 44-1-610 reserved.
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44-1-703. When charges dismissed.
44-1-704. When department of justice to order hearing.
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44-1-801. Notice of hearing.
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44-1-901. Right to appeal.
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44-1-904 through 44-1-909 reserved.
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Part 10 — Jurisdiction of Patrol Officers

44-1-1001. Offenses for which patrol officers may make arrests.
44-1-1002. No authority in labor disputes.
44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles.
44-1-1004. Authority concerning livestock or livestock products in transit.
44-1-1005. Motor carriers safety — enforcement — violations.

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44-1-1101. Duty of patrol officer upon making an arrest.
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44-1-1103. Check in lieu of cash.

Chapter Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Local government law enforcement, Title 7, ch. 32.

Definition of peace officer, 45-2-101.

Obstructing a peace officer, 45-7-302.

Highway safety, Title 61, ch. 2.

Qualification as driver examiners, 61-5-101.

Part 1
General Provisions

Part Cross-References

Department of Justice to administer law and make rules, 61-6-105.

44-1-101. Creation of highway patrol. There is hereby created a "Montana highway patrol" under the control and supervision of the department of justice.

History: En. Sec. 1, Ch. 199, L. 1943; R.C.M. 1947, 31-101; amd. Sec. 1, Ch. 503, L. 1985.

44-1-102. General duties of department of justice. The department of justice shall provide for clerical help, for the maintenance of the patrol, and for the employment and supervision of the patrol in conformity with the provisions of this chapter.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Department of Justice to administer laws and make rules, 61-6-105.

44-1-103. Authority to make rules. The department of justice may make, promulgate, and amend rules which prescribe procedures and practice requirements of the Montana highway patrol.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Department of Justice to administer laws and make rules, 61-6-105.

44-1-104. Duty to furnish governor with transportation. The department of justice shall furnish the governor with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

44-1-105. Department of justice to furnish equipment. The department of justice shall furnish patrol officers with automobiles equipped and fitted with a distinctive siren and a particularly designated light for use at night. The department shall furnish all patrol officers with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts. Any such equipment and uniforms shall remain the property of the state of Montana.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Applicability of motor pool provisions, 2-17-411.

44-1-106. Authority of department of justice to dispose of equipment. The department of justice shall have authority to destroy, sell, or dispose of any and all obsolete equipment, uniforms, or parts of obsolete equipment or uniforms. Any money received from the sale of these items must be deposited into the state treasury in the fund and to the credit of the accounting entity from which it was originally purchased.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 529, L. 1991.

Cross-References

Disposal of surplus property, 18-4-221 through 18-4-226, 18-4-231 through 18-4-234; Title 18, ch. 6.

Part 2
Highway Patrol Chief

Part Cross-References

Chief of patrol defined, 61-1-302.

44-1-201. Appointment and tenure. The attorney general shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Cross-References

State Commissioner on Vehicle Equipment Safety Commission, 61-2-204.

44-1-202. Qualifications. The person named as chief shall have been a continuous resident of Montana for at least 5 years.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

44-1-203. Salary and expenses. The chief shall receive a salary fixed by the attorney general within the limits of the legislative appropriation for such purpose and travel expenses, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Part 3
Powers and Duties of Chief Relating to Patrol Officers

44-1-301. General supervisory powers. The chief shall have direct control and supervision of all patrol officers, subject to the approval of the attorney general.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 1, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

44-1-302. Powers relating to supervisory personnel. The duties and jurisdiction of the supervisory personnel shall be outlined and defined by and under the control of the chief.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch.

483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 2, Ch. 146, L. 1979.

44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrol officers;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of such employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrol officer of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 3, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

State property purchases, Title 18, ch. 1, 4, and 5.

Authority of Department of Justice to suspend, demote, or reprimand, 44-1-701.

Chief as Commissioner on Vehicle Equipment Safety Commission, 61-2-204.

Part 4
Appointment of Patrol Officers

44-1-401. Qualifications of patrol officers. Patrol officers shall possess the following qualifications:

(1) sound and active physical and mental condition;

(2) good moral character;

(3) residency in Montana;

(4) having passed a satisfactory test in the operation of automobiles; and

(5) citizenship in the United States.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(3); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 414, L. 1991.

Cross-References

Definition of highway patrol officer, 61-1-305.

44-1-402. Appointment of supervisory personnel. Supervisory personnel shall be selected from the patrol officers by the chief. The chief shall designate supervisory personnel, including but not limited to captains, lieutenants, sergeants, and patrol officers, in such numbers as necessary but within the limits of the legislative appropriation made available for such purposes.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 4, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

44-1-403. Repealed. Sec. 2, Ch. 414, L. 1991.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(b); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 102, Ch. 370, L. 1987.

44-1-404. Status of replacements for patrol officers who enter the armed forces. Patrol officers filling vacancies caused by the incumbents' entrance into the armed forces of the United States shall, on the return of the incumbents, be placed in the patrol reserve without pay, except that they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrol officers shall be used for future replacements in the permanent patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(c); amd. Sec. 1, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Leave of absence of public employee attending training camp, 10-1-604.

Reemployment of public employee upon completion of service, 10-2-221.

Part 5
Salaries and Expenses

Part Cross-References

Highway Patrol Officers' Retirement System, Title 19, ch. 6.

44-1-501. Payment of expenses. All expenses of the highway patrol shall be paid out of the transportation department's account in the state special revenue fund.

History: En. Sec. 1, Ch. 285, L. 1971; R.C.M. 1947, 31-105.1; amd. Sec. 2, Ch. 7, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 20, Sp. L. June 1986; amd. Sec. 3, Ch. 512, L. 1991.

Cross-References

Highway funds — state funds, Title 60, ch. 3, part 2.

44-1-502. Repealed. Sec. 2, Ch. 363, L. 1987.

History: En. 31-105.2 by Sec. 1, Ch. 221, L. 1977; R.C.M. 1947, 31-105.2.

44-1-503. Salary upon permanent appointment. In the event that a probationary patrol officer is appointed permanently, he shall, at the time of such appointment, receive the base salary of a patrol officer.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(2); amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Probationary status and tenure, Title 44, ch. 1, part 6.

44-1-504 through 44-1-510 reserved.

44-1-511. Payment of salary benefit to officers injured in performance of duty. (1) A member of the highway patrol who, in the performance of his duties, suffers an injury which necessitates medical or other remedial treatment and which renders him unable to perform his duties shall be paid the full amount of his regular salary as a salary benefit until one of the following occurs:

(a) He ceases to be disabled.

(b) A period of 1 year elapses after the date of the injury.

(c) Although disabled, he is ordered returned to light duty by the chief of the highway patrol.

(d) Although disabled, he accepts a transfer position within the department of justice.

(e) He waives his benefit.

(2) The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section.

History: En Sec. 1, Ch. 317, L. 1979.

Cross-References

Workers' compensation, Title 39, ch. 71.

Reimbursement for costs of law enforcement assistance, 44-11-202.

Crime victims reparations, Title 53, ch. 9, part 1.

44-1-512. Determination of eligibility for salary benefit. (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of his duties and whether an injury so incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion in his discretion.

History: En Sec. 2, Ch. 317, L. 1979.

44-1-513. Periodic medical examinations — waiver of right to salary benefit. (1) The chief may appoint a physician to examine the officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under subsection (1) or 44-1-512(2) waives any salary benefit to which he might otherwise be entitled under 44-1-511.

History: En Sec. 3, Ch. 317, L. 1979.

44-1-514. Discontinuation of salary benefit when retirement allowance granted. Payment of a salary benefit under 44-1-511 shall be discontinued if the injured officer is disabled for an indefinite period and is granted a disability retirement allowance under Title 19, chapter 6. If an officer is indefinitely disabled and does not apply for a disability retirement allowance, application therefor may be made by the chief.

History: En Sec. 4, Ch. 317, L. 1979.

44-1-515. Assignment to light duty or another position within department of justice. (1) The chief, taking into consideration the medical opinions he has received, may determine at any time that an injured officer is able to perform light police duty consistent with his status as a law enforcement officer and may order the officer assigned to such light duty. If the officer refuses to perform the light duty, payment of the salary benefit under 44-1-511 shall be discontinued.

(2) The chief may order an injured officer transferred from the highway patrol to another position within the department of justice. An officer may decline to accept a transfer under this subsection with no loss of salary benefit.

History: En Sec. 5, Ch. 317, L. 1979.

44-1-516. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: En Sec. 6, Ch. 317, L. 1979.

Cross-References

Probationary status and tenure, Title 44, ch. 1, part 6.

44-1-517. Subrogation. The state has a cause of action for reimbursement of sums it has paid to an officer as a salary benefit and for medical treatment and examinations against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the state.

History: En Sec. 7, Ch. 317, L. 1979.

Cross-References

Recovery against governmental entity, 2-9-305.

44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit. (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 shall be credited to the length of service computed for retirement purposes under 19-2-701.

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the department of justice that is covered under the Public Employees' Retirement System Act, all of the officer's length of service credited with the Montana patrol officers' retirement system must be transferred to the public employees' retirement system in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrol officers' retirement account must

be transferred to the public employees' retirement account in the officer's credit. The state's "adjusted contributions" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system.

History: En Sec. 8, Ch. 317, L. 1979; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 235, Ch. 265, L. 1993.

Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

Part 6

Probationary Status and Tenure

Part Cross-References

Duties of Chief of Highway Patrol Bureau, 44-1-303.

44-1-601. Probationary training and service — patrol officers. A new patrol officer shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary patrol officer will automatically be discharged.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(a); amd. Sec. 3, Ch. 7, L. 1979; amd. Sec. 5, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

44-1-602. Probationary training and service — supervisory personnel. All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary supervisory personnel will automatically revert to their previous ranks without prejudice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(b); amd. Sec. 4, Ch. 7, L. 1979; amd. Sec. 6, Ch. 146, L. 1979.

44-1-603 through 44-1-610 reserved.

44-1-611. Tenure. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrol officer, or any other rank under and pursuant to the provisions of this chapter, except as provided in 44-1-601 and 44-1-602, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided for one or more of the causes specified in 44-1-612.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(5); amd. Sec. 1, Ch. 217, L. 1989.

Cross-References
Duties of Department of Justice, 44-1-102.

44-1-612. Cause for suspension, demotion, or discharge. Cause for suspension, demotion, or discharge is:

(1) conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(2) gross neglect of duty or willful violation or disobedience of orders or regulations;

(3) loitering about or entering places of ill fame or ill repute or in which illegal gambling is known to be conducted or to be in progress, except in the immediate discharge of duty;

(4) conduct unbecoming an officer;

(5) drinking intoxicating liquor while using state-owned cars or in uniform or being intoxicated in a public place;

(6) sleeping while on duty;

(7) incapacity or partial incapacity materially affecting ability to perform official duties;

(8) gross inefficiency in performing duties; or

(9) willful disobedience of rules adopted by the department of justice governing the conduct and discipline of members of the patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(6); amd. Sec. 5, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References
Code of Ethics, Title 2, ch. 2, part 1.

Part 7

Disciplinary Action — Preliminary Procedure

Part Cross-References
Code of ethics, Title 2, ch. 2, part 1.
Duties of Department of Justice, 44-1-102.
Cause for suspension, demotion, or discharge, 44-1-612.
Withholding officer's salary for failure to provide information, 44-2-205.

44-1-701. Authority of department of justice to suspend or demote. When the department of justice has cause to believe that any member of the highway patrol has violated any of the grounds for suspension, demotion, or discharge, it may impose a suspension without pay for up to 10 days without filing charges and conducting a hearing under part 8.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 713, L. 1991.

Cross-References
Duties of Chief of Highway Patrol generally, 44-1-303.

44-1-702. Preferring charges. (1) The charge or charges against any member of the highway patrol shall be made in writing and signed and sworn to by the person making the charge or charges.

(2) The written charge or charges shall be filed with the department of justice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(a) thru (c); amd. Sec. 1, Ch. 503, L. 1985.

44-1-703. When charges dismissed. When charges are filed and the department of justice believes such charge or charges do not constitute grounds for suspension, demotion, or discharge, it shall dismiss such charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(e); amd. Sec. 1, Ch. 503, L. 1985.

44-1-704. When department of justice to order hearing. When charges are filed and the department of justice believes that such charge or charges constitute grounds for suspension, demotion, or discharge, it shall order a hearing to be had thereon before it and fix a time for such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(d); amd. Sec. 1, Ch. 503, L. 1985.

44-1-705. Suspension pending hearing and decision. If the department of justice orders a hearing, the chief may suspend such patrol officer pending the rendition of the decision made in such case.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(b); amd. Sec. 7, Ch. 146, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Part 8

Disciplinary Action Hearing and Decision

Part Cross-References

Duties of Department of Justice, 44-1-102.

Cause for suspension, demotion, or discharge, 44-1-612.

44-1-801. Notice of hearing. (1) The department of justice shall, at least 10 days before the time appointed for a hearing, serve written notice on the accused patrol officer, specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) If the accused patrol officer is located within the state and his whereabouts is known, the service required by subsection (1) shall be made personally. If the accused patrol officer is located outside the state and his whereabouts is known, service may be made by mailing the written notice to his place of residence. If, at the time, the whereabouts of the accused patrol officer is unknown, service may be made upon him by mailing the written notice to him at his last-known place of residence in Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(10); amd. Sec. 6, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

44-1-802. Authority of department of justice — conduct of hearing. (1) The department of justice shall be the authority to hear such charge or charges and render a decision and appropriate order.

(2) The department shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and, for those purposes, to issue subpoenas and cause the same to be served and executed in any part of the state.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(a), (11)(b); amd. Sec. 1, Ch. 503, L. 1985.

44-1-803. Rights of accused. The accused patrol officer shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf. He shall be entitled to be represented by counsel, at his own expense, at such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(c); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 713, L. 1991.

44-1-804. Rendering and filing of decision. The department of justice shall, within 30 days after such hearing or within the additional time to which the accused patrol officer consents, render its decision in writing and file same in its office, with the chief, and with the patrol officer accused.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(d); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 4, Ch. 713, L. 1991.

44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the department of justice finds that the charge or charges made against the patrol officer are not true, the department shall reinstate the accused patrol officer to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(b); amd. Sec. 7, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Reinstatement and backpay upon reversal or modification, 44-1-903.

44-1-806. Disciplinary action. If after a hearing the department of justice finds that any charge or charges made against the patrol officer are true, it may punish the offending party by suspension without pay, demotion, or discharge.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(a); amd. Sec. 8, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 5, Ch. 713, L. 1991.

44-1-807. Length of suspension. A member under suspension shall be on leave without pay for a period not to exceed 30 days.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(a); amd. Sec. 9, Ch. 7, L. 1979.

44-1-808. Demotion pay status. In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(b).

Cross-References

Reinstatement and backpay upon reversal or modification, 44-1-903.

Part 9

Disciplinary Action — Appeal to Court

44-1-901. Right to appeal. (1) A patrol officer who is suspended, demoted, or discharged has a right of appeal:

(a) to the district court in the county in which the claim arose or to the district court of Lewis and Clark County; or

(b) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the officer is covered by a collective bargaining agreement.

(2) The appeal to the district court must be made within 10 days after the decision or determination of the department of justice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(a), (13)(b); amd. Sec. 10, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 225, L. 1991.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

44-1-902. Action by court. The district court shall review a decision or determination appealed pursuant to 44-1-901(1)(a) in a summary manner and render its decision within 90 days from the filing of the appeal.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch.

483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(c); amd. Sec. 2, Ch. 225, L. 1991.

44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the department of justice is finally reversed or modified, the accused patrol officer must be reinstated in his position. Upon reinstatement, the department shall pay to the patrol officer any salary or wages withheld from him pending the determination of the charge or charges or take such action as may be directed by resolution of the grievance procedure or the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(d); amd. Sec. 11, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 225, L. 1991.

Cross-References

Reinstatement and backpay upon exoneration, 44-1-805.

44-1-904 through 44-1-909 reserved.

44-1-910. Waiver. A patrol officer may waive in writing his rights under Title 44, chapter 1, parts 7 and 8, and accept discipline considered appropriate by the department of justice.

History: En. Sec. 1, Ch. 713, L. 1991.

Part 10

Jurisdiction of Patrol Officers

Part Cross-References

Enforcement of provisions respecting use of snowmobiles, 23-2-641.

Enforcement of motor vehicle statutes, 61-3-602.

Motor vehicle accidents and accident reports, Title 61, ch. 7.

Traffic regulation, Title 61, ch. 8.

Obedience to highway patrol officer, 61-9-105.

Records kept by Department of Justice, 61-11-102.

Patrol officer acting as firewarden, 77-5-104.

44-1-1001. Offenses for which patrol officers may make arrests. (1) The highway patrol chief and all patrol officers may make arrests for the offenses listed in subsection (2) under the following circumstances:

(a) the offense is committed in the presence of the chief or any patrol officer;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(a) deliberate homicide;

(b) assault with a deadly weapon;

(c) arson;

(d) criminal mischief;

(e) burglary;

(f) theft;
(g) kidnapping;
(h) illegal transportation of narcotics; or
(i) violation of the Dyer Act regarding the transportation of stolen automobiles.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 12, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Deliberate homicide, 45-5-102.
Assault, 45-5-201.
Aggravated assault, 45-5-202.
Kidnapping, 45-5-302.
Aggravated kidnapping, 45-5-303.
Criminal mischief, 45-6-101.
Negligent arson, 45-6-102.
Arson, 45-6-103.
Burglary, 45-6-204.
Theft, 45-6-301.
Criminal sale of dangerous drugs, 45-9-101.
Written reports of highway accidents, 61-7-109.

44-1-1002. No authority in labor disputes. Such highway patrol officers have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 1, Ch. 217, L. 1989.

44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles. Patrol officers are considered police officers for the purpose of making arrests for all offenses occurring on the highways, highway rest areas, state highway properties adjacent to the highway, or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(2); amd. Sec. 1, Ch. 645, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Regulations governing arrest authorized, 7-32-4301.
Warrants generally, Title 46, ch. 6, part 2.
Arrest without warrant generally, Title 46, ch. 30, part 3.
Highways defined, 61-1-201, 61-1-202.
Authority of Department of Justice to cancel licenses, 61-5-201.
Reports of accidents on highways, 61-7-109.
"Ways of this state open to the public" — definition, 61-8-101.
Motor vehicle defined, 69-12-101.

44-1-1004. Authority concerning livestock or livestock products in transit. Patrol officers may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. If the patrol officers have good reason to believe that livestock or livestock products have been stolen, they may take possession of the same until the livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(3); amd. Sec. 1, Ch. 217, L. 1989.

Cross-References
Theft, 45-6-301.

Duties of stock inspectors and detectives concerning livestock or livestock products in transit, 81-1-202.

44-1-1005. Motor carriers safety — enforcement — violations. (1) The department of justice shall:

(a) adopt, by rule, standards for safety of operations of motor carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles used in furtherance of its business as a motor carrier;

(b) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight that are designed to transport more than 15 passengers, including the driver, or that are used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the department.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to subsection (1)(a). Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to subsection (1)(a) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section prohibits the inspection of a motor vehicle as provided for by subsection (1)(a) at a safe location on a public road.

(4) The department shall cooperate with the department of transportation to ensure minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapters 5 and 9, and any standards adopted pursuant to subsections (1) and (2) of this section. Each employee designated as a peace officer may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles; and

(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of commercial motor vehicles.

(6) Violations of the standards adopted pursuant to subsection (1) are punishable as provided in 61-9-512.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(4); amd. Sec. 13, Ch. 7, L. 1979; amd. Sec. 1, Ch. 226, L. 1981; amd. Sec. 1, Ch. 394, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 686, L. 1985; amd. Sec. 103, Ch. 370, L. 1987; amd. Sec. 1, Ch. 386, L. 1987; amd. Sec. 1, Ch. 226, L. 1991; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 80, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 80 in (1)(c), after "weight", substituted "that are designed to transport more than 15 passengers, including the driver" for "if they are used to transport passengers for hire"; and made minor changes in style. Amendment effective March 7, 1995.

Cross-References

Vehicle equipment, Title 61, ch. 9.

Applicability of Title 61, chapter 9, 61-9-109.

Performance ability of brakes, 61-9-312.

Inspections by officers of Department of Justice, 61-9-501.

Owners and drivers to comply with inspection laws, 61-9-503.

Joint enforcement of motor carrier safety standards by Highway Patrol, Department of Transportation, 61-10-141.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Display of permit, 61-10-142.

Confiscation — action by Commission, 61-10-143.

Motor carriers, Title 69, ch. 12.

Part 11

Procedure for Arrests

Part Cross-References

Arrest, Title 46, ch. 6.

Circumstances in which a peace officer may arrest, 46-6-210.

Bail, Title 46, ch. 9.

Obedience to highway patrol officer, 61-9-105.

44-1-1101. Duty of patrol officer upon making an arrest. Upon making an arrest, a patrol officer shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace; or

(3) accept bail determined pursuant to Title 46, chapter 9, part 3.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 14, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Regulations governing arrest authorized, 7-32-4301.

Initial appearance of arrested person, Title 46, ch. 7.

44-1-1102. Procedure when patrol officer accepts bail. If the patrol officer accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The patrol officer shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 15, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Bail schedule for minor offenses — acceptance by peace officer, 46-9-302.

Acceptance of bail by peace officer, 46-9-302.

44-1-1103. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrol officers or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash provided that:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents identifying him.

(2) If a check is offered in lieu of cash, the highway patrol officer or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond which is returned for insufficient funds is subject to prosecution under 45-6-316, and obtaining bond constitutes securing services for the purposes of that section.

History: En. 31-112.1 by Sec. 1, Ch. 295, L. 1977; R.C.M. 1947, 31-112.1; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Issuing bad checks, 45-6-316.

Furnishing bail, Title 46, ch. 9, part 4.

CHAPTER 2

INVESTIGATION, COMMUNICATION, AND IDENTIFICATION

Part 1 — Criminal Investigation

44-2-101. Repealed.
44-2-102. Repealed.
44-2-103. Repealed.
44-2-104 through 44-2-110 reserved.
44-2-111. Definition of "agent".
44-2-112. Repealed.
44-2-113. Qualifications of agents.
44-2-114. Personnel covered by PERS.
44-2-115. Powers and duties of agents.
44-2-116. Cooperation of state agencies.

Part 2 — State System of Criminal Identification

44-2-201. Establishment of state system.
44-2-202. Assistance to and instruction of local officers.
44-2-203. Repealed.
44-2-204. Repealed.
44-2-205. Withholding of salary of officer who fails to provide information.
44-2-206. Cooperation with FBI and other states.

Part 3 — Teletypewriter Communications System

44-2-301. Establishment — inclusion of other state agencies.
44-2-302. Powers of attorney general.
44-2-303. Federal cost sharing.
44-2-304. Report by attorney general.
44-2-305 through 44-2-310 reserved.
44-2-311. Participation by local and other agencies.
44-2-312. Authorization of monthly operational charge.
44-2-313. Payment of charge.
44-2-314. Use of money — records.
44-2-315. Removal from network upon nonpayment.
44-2-316. Assessment for personnel.

Part 4 — Dental Records
Missing Persons and Unidentified Bodies

44-2-401. Missing persons — dental records.
44-2-402. Dental examination — records — report.

Part 5 — Missing Children

44-2-501. Short title.
44-2-502. Definitions.
44-2-503. Missing children information program.
44-2-504. Reports to missing children information program.
44-2-505. Duties of law enforcement authority.
44-2-506. List of missing Montana school children.
44-2-507. Notice to parents of children absent from school.
44-2-508 through 44-2-510 reserved.
44-2-511. School enrollment procedures to aid identification of missing children.

Part 6 — Escape or Release From Confinement—Notification

44-2-601. Notification of escape or release from confinement.

Part 7 — Drug Abuse Resistance Education (D.A.R.E.)

44-2-701. Montana drug abuse resistance education trust fund account — administration by board of crime control.
44-2-702. Montana drug abuse resistance education program.
44-2-703. Gifts and grants to program.
44-2-704. Program costs.
44-2-705. Restriction on use of funds.

Chapter Cross-References

Statewide emergency telephone 9-1-1 system, Title 10, ch. 4.

Private investigators and patrol officers, Title 37, ch. 60.

Automatic telephone alarm systems, 37-60-408.

Part 1
Criminal Investigation

Part Cross-References

Investigative procedures, Title 46, ch. 4.

44-2-101. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 32-414(1).

44-2-102. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. Sec. 7, Ch. 176, L. 1967; amd. Sec. 7, Ch. 219, L. 1971; R.C.M. 1947, 32-420.

44-2-103. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 4, Ch. 176, L. 1967; amd. Sec. 4, Ch. 219, L. 1971; R.C.M. 1947, 32-417.

44-2-104 through 44-2-110 reserved.

44-2-111. Definition of "agent". As used in this part, "agent" means a person appointed by the attorney general to conduct criminal investigations and perform related duties within the department of justice.

History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971; R.C.M. 1947, 32-415; amd. Sec. 5, Ch. 503, L. 1985; amd. Sec. 1, Ch. 280, L. 1991.

Cross-References

Definition of agent, 28-10-101.

44-2-112. Repealed. Sec. 4, Ch. 280, L. 1991.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(2).

44-2-113. Qualifications of agents. Each agent must be a person qualified by experience, training, and high professional competence in criminal investigation. Each agent shall meet all the requirements of 7-32-303.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(3); amd. Sec. 2, Ch. 280, L. 1991.

44-2-114. Personnel covered by PERS. All agents and assisting personnel shall be covered by the public employees' retirement system.

History: En. Sec. 5, Ch. 176, L. 1967; amd. Sec. 5, Ch. 219, L. 1971; R.C.M. 1947, 82-418.

Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

44-2-115. Powers and duties of agents. An agent appointed by the attorney general pursuant to this part is a peace officer and:

(1) shall provide investigative assistance to city, county, state, and federal law enforcement agencies at their request in accordance with rules adopted by the department of justice;

(2) shall have concurrent jurisdiction with local law enforcement agencies to investigate offenses involving dangerous drugs, as provided in Title 45, chapter 9, and violations that constitute organized criminal activity;

(3) shall investigate gambling activities in this state as provided in 23-5-113;

(4) shall investigate any apparent violations of penal statutes disclosed by an audit of a state agency by the legislative auditor;

(5) shall investigate apparent violations of penal statutes referred by the state workers' compensation insurance fund; and

(6) shall assist whenever possible any law enforcement school held in the state for law enforcement officers when requested.

History: En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971; R.C.M. 1947, 82-416; amd. Sec. 16, Ch. 7, L. 1979; amd. Sec. 3, Ch. 280, L. 1991; amd. Sec. 14, Ch. 630, L. 1993.

Cross-References

Peace officer defined, 1-1-207, 45-2-101.

Law Enforcement Academy, Title 44, ch. 17.

44-2-116. Cooperation of state agencies. All state departments and agencies shall cooperate with such agents and assisting personnel in providing transportation and educational and laboratory facilities for their use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967; amd. Sec. 6, Ch. 219, L. 1971; R.C.M. 1947, 82-419.

Part 2

State System of Criminal Identification

44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete state system of criminal identification.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part); amd. Sec. 17, Ch. 7, L. 1979.

44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law enforcement officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint records.

History: En. Sec. 37, Ch. 199, L. 1965; R.C.M. 1947, 80-2006; amd. Sec. 18, Ch. 7, L. 1979.

44-2-203. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part).

44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 34, Ch. 199, L. 1965; R.C.M. 1947, 80-2003.

44-2-205. Withholding of salary of officer who fails to provide information. The department shall report to the attorney general the failure of any officer to provide information as required by law. After an investigation of the report, the attorney general may order the proper disbursing officer to withhold payment of the salary of the officer who failed to provide the information until the information is given to the department.

History: En. Sec. 35, Ch. 199, L. 1965; R.C.M. 1947, 80-2004.

Cross-References

Discipline of highway patrol members, Title 44, ch. 1, parts 7 through 9.

44-2-206. Cooperation with FBI and other states. The department shall cooperate with identification bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.

History: En. Sec. 36, Ch. 199, L. 1965; R.C.M. 1947, 80-2005.

Part 3

Teletypewriter Communications System

Part Cross-References

Criminal justice information, Title 44, ch. 5.

44-2-301. Establishment — inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype. He is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

History: En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969; R.C.M. 1947, 82-3901.

44-2-302. Powers of attorney general. To carry out the provisions of this part, the attorney general is authorized to:

(1) purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this part;

(2) employ such personnel as may be necessary to operate such facilities within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(a), (b).

Cross-References

Duties of Attorney General, 2-15-501.

44-2-303. Federal cost sharing. The attorney general shall contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general may sign agreements with the federal agencies. Any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited in the system's account and shall be used, if at all possible, to reduce the spending of money appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967; amd. Sec. 5, Ch. 145, L. 1969; R.C.M. 1947, 82-3905; amd. Sec. 19, Ch. 7, L. 1979.

44-2-304. Report by attorney general. The attorney general shall submit, as a part of the information required by 17-7-111, a report in detail covering the operations of the communications network, the accounting of all money received and expended, and the need to expand or improve the system.

History: En. Sec. 6, Ch. 1, Ex. L. 1967; amd. Sec. 6, Ch. 145, L. 1969; R.C.M. 1947, 82-3906; amd. Sec. 35, Ch. 112, L. 1991; amd. Sec. 31, Ch. 349, L. 1993.

44-2-305 through 44-2-310 reserved.

44-2-311. Participation by local and other agencies. Any county, city, or other law enforcement agency may, with the approval of the attorney general, connect to the system and participate in it upon payment of or agreement to pay those costs established by the department of justice.

History: En. Sec. 4, Ch. 1, Ex. L. 1967; amd. Sec. 4, Ch. 145, L. 1969; R.C.M. 1947, 82-3904.

44-2-312. Authorization of monthly operational charge. The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-313. Payment of charge. Such charge shall be billed monthly to the agencies. Payments made as a result of the billing shall be remitted to the attorney general and deposited by him in a special account in the state treasury.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part); amd. Sec. 20, Ch. 7, L. 1979.

44-2-314. Use of money — records. The state treasurer is authorized to draw warrants on this account upon request of the attorney general when money is needed to pay any of the costs of keeping the system operative. A strict accounting must be kept of all receipts and disbursements and must be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part); amd. Sec. 30, Ch. 325, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 325 near beginning substituted "state treasurer" for "state auditor"; and made minor changes in style. Amendment effective July 1, 1995.

44-2-315. Removal from network upon nonpayment. Law enforcement agencies, other than the state of Montana or any of its subdivisions, that become 90 days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the department of justice shall take the necessary steps to carry out this provision.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-316. Assessment for personnel. A special prorated assessment shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie. This assessment shall be made monthly the same as the operational charge. It shall be transmitted, deposited, and drawn by warrant as are other warrants as provided in 44-2-312 through 44-2-315, except that the assessment may not be levied against the one central station for which the assessment is made.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(d); amd. Sec. 21, Ch. 7, L. 1979.

Part 4

Dental Records
Missing Persons and Unidentified Bodies

44-2-401. Missing persons — dental records. (1) Any person who reports a missing person to a police or sheriff's department or other law enforcement authority must be given a form, supplied by the department of ustice, that authorizes the release of the dental records of the missing person. The form must state that if the person is still missing 30 days after the report was made, the form should be signed by a relative of the missing person and aken to the dentist of the missing person, who must release the dental records or copies thereof to the relative. The records must be submitted by the relative within the next 10 days to the law enforcement authority to which the missing person report was made.

(2) If the missing person has not been found within 30 days after the report was made and no relative exists or can be located, the law enforcement authority may execute a signed written declaration stating that an investigation into the location of the missing person is being conducted and that the dental records may be necessary to the investigation. A dentist shall release the missing person's dental records upon presentation of the declaration.

(3) If a person reported missing has not been found within 45 days after the report was made, the law enforcement authority conducting the investigation shall confer with the county coroner or state medical examiner and write a missing person report on a form supplied by the department of justice. The report and any dental records or copies thereof obtained under this section must be submitted to the department of justice.

(4) The department of justice shall maintain an information file concerning each person reported to it as missing. The file must include information received under this section and any other information the department considers relevant to locating the missing person.

(5) The department files must be made available to any law enforcement agency attempting to locate missing persons.

(6) A law enforcement authority that finds a missing person or is notified that he has been found shall notify the department of justice, which shall return all dental records to the dentist and destroy the file prepared under subsection (4) concerning the person.

History: **En. Sec. 1, Ch. 389, L. 1983.**

44-2-402. Dental examination — records — report. (1) If the coroner cannot identify a body, he or the state medical examiner shall have a dentist examine the body, and if the body cannot be identified from the dental examination, the coroner or state medical examiner must send the dental examination results to the department of justice on a form supplied by the department.

(2) The department is a repository for dental examination records filed with it under this section. The department shall compare such records with dental records filed with it pursuant to 44-2-401 in an attempt to identify the body and must submit any findings to the coroner or state medical examiner.

History: **En. Sec. 2, Ch. 389, L. 1983.**

Part 5

Missing Children

44-2-501. Short title. This part may be cited as the "Missing Children Act of 1985".

History: **En. Sec. 1, Ch. 559, L. 1985.**

44-2-502. Definitions. As used in this part, the following definitions apply:

(1) "Missing child" means any person who has been reported as missing to a law enforcement authority and:

(a) who is under 18 years of age;

(b) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

(c) whose location has not been determined.

(2) "Missing child report" is a report prepared on a form designed by the department of justice for use by private citizens and law enforcement authorities to report information about missing children to the missing children information program provided for in 44-2-503.

History: En. Sec. 2, Ch. 559, L. 1985.

44-2-503. Missing children information program. (1) The department of justice shall establish a missing children information program to create a central repository to aid in the location of missing children in Montana.

(2) The missing children information program shall:

(a) establish a system of intrastate communication of information relating to any child determined to be missing by the parent, guardian, or legal custodian of the child or by a law enforcement authority;

(b) provide a centralized file for the exchange of information on missing children within the state, including information obtained under the provisions of 44-2-401;

(c) interface with the national crime information center computer system for exchange of information on children suspected of interstate travel; and

(d) provide the superintendent of public instruction each month with a list of missing Montana school children for the purposes of 44-2-506.

History: En. Sec. 3, Ch. 559, L. 1985.

44-2-504. Reports to missing children information program. (1) All state, county, and municipal law enforcement authorities shall submit to the missing children information program provided for in 44-2-503 any missing child report and other information required by 44-2-401.

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts are unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority within the county in which the child became missing.

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program of any child whose location has been determined.

History: En. Sec. 4, Ch. 559, L. 1985.

44-2-505. Duties of law enforcement authority. Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement authority that the child is missing, the law enforcement authority shall:

(1) immediately inform all on-duty law enforcement officers of the existence of the missing child report;

(2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and

(3) immediately enter the missing child report into the national crime information center computer system.

History: En. Sec. 5, Ch. 559, L. 1985.

44-2-506. List of missing Montana school children. (1) The superintendent of public instruction shall assist the missing children information program provided for in 44-2-503 in identifying and locating missing children who are enrolled in Montana public school districts in kindergarten through grade 12 by:

(a) collecting each month a list of missing Montana school children as provided by the missing children information program provided for in 44-2-503;

(b) distributing the list of missing school children on a monthly basis, unless the list has no change from the previous month's information, to all school districts admitting children to kindergarten through grade 12;

(c) designing the list to include pertinent available information for identification of the missing school child, including if possible a recent photograph of the child; and

(d) notifying the appropriate law enforcement agency and the missing children information program as soon as any additional information is obtained or contact is made with respect to a missing school child.

(2) Each school district in Montana shall:

(a) distribute to each school building within the district the list of missing school children provided for in subsection (1); and

(b) notify the appropriate law enforcement agency at the earliest known contact with any child whose name appears on the list of missing school children.

History: En. Sec. 6, Ch. 559, L. 1985.

44-2-507. Notice to parents of children absent from school. The trustees of any elementary or high school district shall establish procedures to be followed by school personnel for attempting to contact by the end of a school day any parent, guardian, or legal custodian whose child is absent from school but who has not reported the child as absent for the school day to determine whether the parent, guardian, or legal custodian is aware of the child's absence from school.

History: En. Sec. 7, Ch. 559, L. 1985.

Cross-References

School attendance, Title 20, ch. 5, part 1.

44-2-508 through 44-2-510 reserved.

44-2-511. School enrollment procedures to aid identification of missing children. (1) When a child enrolls in a school district for the first time, the school district shall:

(a) require that the child's parent, guardian, or legal custodian present to the school, within 40 days of enrollment, proof of identity of the child; and

(b) request the appropriate school records of the child from the previous school attended by the child. The school enrolling the child shall make the request within 40 days of enrollment of the child.

(2) If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection (1) within 40 days of enrollment or if the school district does not receive the school records of the child within 60 days of enrollment, the school shall notify the missing children information program provided in 44-2-503 and a local law enforcement authority of the fact that no proof of identity has been presented for the child.

(3) A school district that receives a request for the school records of a child shall transfer the records to the requesting school as soon as possible.

(4) When a school district receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school has been reported as a missing child, the school district shall:

(a) flag in some manner the student records of the child; and

(b) notify the missing children information program and a local law enforcement authority if a request for the school records is received from another school district.

(5) If it is necessary for a local law enforcement authority to conduct an investigation on a missing child, school personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

(6) For the purposes of this section:

(a) "proof of identity" means a certified copy of a birth certificate, a certified transcript or similar student records from the previous school, or any documentary evidence that a school district considers to be satisfactory proof of identity; and

(b) "school district" means a school district as defined in 20-6-101 or a nonpublic elementary school or high school in the state.

History: En. Sec. 1, Ch. 407, L. 1987.

Cross-References

Compulsory enrollment and excuses, 20-5-102.

Part 6

Escape or Release From Confinement — Notification

44-2-601. Notification of escape or release from confinement. (1) The notice required by subsection (2) must be given if:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14, escapes or is released from confinement;

(b) a person confined in an institution other than a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a prison or other state institution after conviction of a criminal offense involving the use or threat of physical force or violence escapes or is released from confinement; or

(c) a person confined in a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the use or threat of physical force or violence escapes from confinement.

(2) If a person referred to in subsection (1) escapes or is released from confinement, the institution in which the person was confined shall notify:

(a) the sheriff or other law enforcement officials in the county in which the offense occurred;

(b) the sheriff or other law enforcement officials in the county or counties, if known, in which a victim or the victims of the offense reside at the time of the escape or release;

(c) the sheriff or other law enforcement officials in the county, if known, in which the person intends to reside upon leaving confinement;

(d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital, mental health facility, or other institution from which the person escaped or was released is located;

(e) a victim of the offense who has requested notification in the event of an escape or a release of the person; and

(f) a court that has requested that it be notified in the event of an escape or a release of the person.

(3) The department shall adopt a methodology for notifying the individuals and entities listed in subsection (2). The methodology must take into account the public safety concerns related to escape. Notification concerning a pending release must be made prior to the release.

History: En. Sec. 1, Ch. 103, L. 1991; amd. Sec. 1, Ch. 374, L. 1993; amd. Sec. 1, Ch. 125, L. 1995; amd. Sec. 1, Ch. 372, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 125 inserted (2)(e) requiring notification to a victim; and made minor changes in style.

Chapter 372 in (1)(b), near end after "violence", deleted "or after being designated as a dangerous offender under 46-18-404"; in (1)(c), near end after "violence", deleted "or after being designated as a dangerous offender under 46-18-404"; and inserted (3) regarding notification concerning an escape or a pending release. Amendment effective April 12, 1995.

Part 7

Drug Abuse Resistance Education (D.A.R.E.)

44-2-701. Montana drug abuse resistance education trust fund account — administration by board of crime control. (1) There is a Montana drug abuse resistance education trust fund account in the state special revenue fund in the state treasury.

(2) Funds deposited in the account may be expended by the Montana board of crime control, as provided for in 2-15-2006, to fund services and activities under and payment of administrative costs of the Montana drug abuse resistance education program provided for in 44-2-702.

History: En. Sec. 1, Ch. 808, L. 1991.

Cross-References

Drug offense fines, penalties, and forfeitures in Justice's Courts used for local government drug education, 3-10-601.

Drug laws property forfeiture sale proceeds used for drug education, 44-12-206.

Seized money and proceeds of seized property sold at official sale used for drug education, 46-5-308.

Drug offense fines used for drug education, 46-18-235.

44-2-702. Montana drug abuse resistance education program. (1) The Montana board of crime control shall use the money in the Montana drug abuse resistance education trust fund account established by 44-2-701 to fund services and activities operated by nonprofit, private, community-based educational and service organizations, units of local government, or school districts if those services and activities relate solely to the development, enhancement, and expansion of drug abuse resistance education in Montana.

(2) In administering the Montana drug abuse resistance education program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement 44-2-703, 44-2-704, and this section.

History: En. Sec. 2, Ch. 808, L. 1991.

Cross-References

Providing youth with intoxicating substance, 16-3-301, 16-6-305, 45-5-622, 45-5-623.

Drug education for higher education students pursuing teaching degree, Title 20, ch. 25, part 6.

Possession by youth of intoxicating substance, 45-5-624.

Board of Pharmacy drug education programs, 50-32-105.

44-2-703. Gifts and grants to program. The Montana board of crime control may accept contributions, gifts, and grants, in money or otherwise, to the Montana drug abuse resistance education program. Upon receipt, contributions, monetary gifts, and grants must be paid into the Montana drug abuse resistance education trust fund account established by 44-2-701.

History: En. Sec. 3, Ch. 808, L. 1991.

44-2-704. Program costs. The costs incurred by the Montana board of crime control in administering the Montana drug abuse resistance education program must be paid with money from the Montana drug abuse resistance education trust fund account established by 44-2-701. The board shall keep costs to a minimum and shall use the board's existing office space, personnel, equipment, and supplies to the extent possible.

History: En. Sec. 4, Ch. 808, L. 1991.

44-2-705. Restriction on use of funds. Funds deposited in the Montana drug abuse resistance education trust fund account may be used only for the program authorized in 44-2-702 and may not be used to pay the expenses of any other program or service administered in whole or in part by the Montana board of crime control or the department of justice.

History: En. Sec. 5, Ch. 808, L. 1991.

CHAPTER 3

MONTANA FORENSIC SCIENCE SYSTEM ACT

Part 1 — General Provisions
Forensic Science

44-3-101. Short title.
44-3-102. Purpose.
44-3-103. Repealed.
44-3-104. Functions of department.
44-3-105. Authority to accept grants.
44-3-106. Power of attorney general to employ personnel.

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44-3-201. State medical examiner.
44-3-202. Repealed.
44-3-203. Associate medical examiners — qualifications.
44-3-204. Associate medical examiners — compensation.
44-3-205 through 44-3-210 reserved.
44-3-211. Duties of state medical examiner.
44-3-212. Repealed.
44-3-213. Report to county attorney.
44-3-214. Records.

Part 3 — Laboratory of Criminalistics

44-3-301. Laboratory of criminalistics.
44-3-302. Fees for laboratory services.
44-3-303. Duties of laboratory director.
44-3-304. Repealed.

Part 4 — Provisions Relating to Corpses

44-3-401. Exemption from liability for autopsy.
44-3-402. Repealed.
44-3-403. Repealed.
44-3-404. Criminal penalty.

Chapter Cross-References

Office of County Coroner generally, Title 7, ch. 4, part 29.

Investigative procedures, Title 46, ch. 4.

Part 1

General Provisions
Forensic Science

44-3-101. Short title. This chapter shall be known as the "Montana Forensic Science System Act".

History: En. 82-427 by Sec. 1, Ch. 530, L. 1977; R.C.M. 1947, 82-427.

44-3-102. Purpose. The purpose of this chapter is to authorize the attorney general to provide the personnel, facilities, and procedures to:

(1) determine the cause of certain types of deaths by such investigation and examination as are in the public interest;

(2) analyze specimens for law enforcement officers; and

(3) provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

History: En. 82-428 by Sec. 2, Ch. 530, L. 1977; R.C.M. 1947, 82-428; amd. Sec. 1, Ch. 689, L. 1989.

44-3-103. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part).

44-3-104. Functions of department. The forensics functions of the department of justice include operation of a division of forensic sciences.

History: En. 82-430 by Sec. 4, Ch. 530, L. 1977; R.C.M. 1947, 82-430; amd. Sec. 6, Ch. 503, L. 1985; amd. Sec. 2, Ch. 689, L. 1989.

44-3-105. Authority to accept grants. The department of justice is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this chapter.

History: En. 82-431 by Sec. 5, Ch. 530, L. 1977; R.C.M. 1947, 82-431; amd. Sec. 7, Ch. 503, L. 1985.

44-3-106. Power of attorney general to employ personnel. The attorney general is authorized to employ personnel necessary to perform the functions authorized under this chapter.

History: En. 82-435 by Sec. 9, Ch. 530, L. 1977; R.C.M. 1947, 82-435(part); amd. Sec. 8, Ch. 503, L. 1985; amd. Sec. 3, Ch. 689, L. 1989.

Part 2

Medical Examiners

Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Presumption person is dead, alive, or missing, 26-1-602, 26-1-622, 26-1-623.

Investigative criminal procedures, Title 46, ch. 4.

Cadavers and autopsies, Title 50, ch. 21.

Duty of medical examiner to report violations of Montana Elder Abuse Prevention Act, 52-3-811.

44-3-201. State medical examiner. A state medical examiner must be appointed by the attorney general. The state medical examiner must be a physician licensed to practice medicine in Montana.

History: En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part); amd. Sec. 9, Ch. 503, L. 1985; amd. Sec. 4, Ch. 689, L. 1989.

44-3-202. Repealed. Sec. 8, Ch. 689, L. 1989.

History: En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).

44-3-203. Associate medical examiners — qualifications. Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(1).

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

44-3-204. Associate medical examiners — compensation. (1) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(2) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(2), (3).

44-3-205 through 44-3-210 reserved.

44-3-211. Duties of state medical examiner. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this chapter;

(3) stimulating and directing research in the field of forensic pathology;

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

(5) appointing associate medical examiners; and

(6) performing autopsies as requested.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(1) thru (4); amd. Sec. 5, Ch. 689, L. 1989.

Cross-References

Duties of County Coroner, 7-4-2911.

Expert testimony, Rules 702 through 705, M.R.Ev. (see Title 26, ch. 10).

Coroner's report of traffic accident deaths, 61-7-112.

44-3-212. Repealed. Sec. 8, Ch. 689, L. 1989.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(5) thru (7).

44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, the state medical examiner shall make available in writing to the county attorney his determination as to the cause of death.

History: En. 82-446 by Sec. 20, Ch. 530, L. 1977; R.C.M. 1947, 82-446; amd. Sec. 22, Ch. 7, L. 1979.

Cross-References

Coroner's report to County Attorney, 46-4-103.

44-3-214. Records. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

History: En. 82-447 by Sec. 21, Ch. 530, L. 1977; R.C.M. 1947, 82-447.

Part 3
Laboratory of Criminalistics

Part Cross-References

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

44-3-301. Laboratory of criminalistics. (1) There is a laboratory of criminalistics within the department of justice. The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers and all state agencies and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(1), (2); amd. Sec. 6, Ch. 689, L. 1989.

44-3-302. Fees for laboratory services. The laboratory may charge reasonable fees for its services, except that it may not charge state, county, city, or municipal law enforcement officers or coroners of this state for services rendered. Fees collected under this section shall be deposited in an account in the state special revenue fund in the state treasury and used to pay operation expenses of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(3); amd. Sec. 1, Ch. 277, L. 1983.

44-3-303. Duties of laboratory director. There is a director of the laboratory of criminalistics. The laboratory director shall:

(1) be responsible for supervision and direction of the laboratory;

(2) assist the department in the appointment of laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the department.

History: En. 82-439 by Sec. 13, Ch. 530, L. 1977; R.C.M. 1947, 82-439; amd. Sec. 10, Ch. 503, L. 1985; amd. Sec. 7, Ch. 689, L. 1989.

44-3-304. Repealed. Sec. 8, Ch. 689, L. 1989.

History: En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).

Part 4

Provisions Relating to Corpses

Part Cross-References

Investigation of death — autopsy, Title 46, ch. 4, part 1.

Cadavers and autopsies, Title 50, ch. 21.

Determination of death, Title 50, ch. 22.

44-3-401. Exemption from liability for autopsy. No criminal or civil action may arise against a medical examiner for performing an autopsy under this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

History: En. 82-441 by Sec. 15, Ch. 530, L. 1977; R.C.M. 1947, 82-441; amd. Sec. 1, Ch. 492, L. 1985.

Cross-References

Liability of mortuary or physician, 46-4-104.

44-3-402. Repealed. Sec. 2, Ch. 408, L. 1983. (See 7-4-2917.)

History: En. 82-442 by Sec. 16, Ch. 530, L. 1977; R.C.M. 1947, 82-442.

44-3-403. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. 82-443 by Sec. 17, Ch. 530, L. 1977; R.C.M. 1947, 82-443.

44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) purposely fails to report or conceals a death, including a fetal death;

(2) refuses to make available prior medical or other information in a death investigation;

(3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse; or

(4) knowingly or purposely disobeys a cessation order of a coroner.

History: En. 82-445 by Sec. 19, Ch. 530, L. 1977; R.C.M. 1947, 82-445; amd. Sec. 23, Ch. 7, L. 1979; amd. Sec. 12, Ch. 660, L. 1991.

CHAPTER 4

MISCELLANEOUS FUNCTIONS OF DEPARTMENT OF JUSTICE

Part 1 — Training Coordinator for County Attorneys

44-4-101. Position established — salary.
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44-4-201. Authorization to issue confidential plates and registrations.
44-4-202. Authority of attorney general to adopt rules.
44-4-203. Registration records.
44-4-204. Applications for confidential plates and registrations.
44-4-205. Use of confidential plates and registrations.
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44-4-901. Attorney general — appointment of special peace officers.
44-4-902. Application for appointment.
44-4-903. Limitations on special peace officer.
44-4-904. Responsibility of corporation.

Chapter Cross-References

Duty of Attorney General with regard to crime victims, 46-24-103.

Part 1

Training Coordinator for County Attorneys

44-4-101. Position established — salary. There is created within the department of justice the position of training coordinator for county attorneys. The position of training coordinator for county attorneys is an exempt position as provided in 2-18-103. The salary for this position is the same as that provided in 7-4-2503 for a county attorney in a county with a population in excess of 30,000.

History: En. Sec. 1, Ch. 353, L. 1973; R.C.M. 1947, 82-421; amd. Sec. 24, Ch. 7, L. 1979; amd. Sec. 19, Ch. 455, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 455 inserted last two sentences regarding exemption and salary for position of training coordinator. Amendment effective April 14, 1995.

44-4-102. Appointment. The training coordinator shall be appointed by the attorney general from a list of three names proposed and submitted by the Montana county attorneys' association.

History: En. Sec. 2, Ch. 353, L. 1973; R.C.M. 1947, 82-422.

44-4-103. Functions. The training coordinator shall perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys, city attorneys, and other law enforcement personnel. The training coordinator may require payment by city attorneys of a fee commensurate with the cost of the training.

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function; and

(6) as provided in 44-4-111, acting as special counsel.

History: En. Sec. 3, Ch. 353, L. 1973; R.C.M. 1947, 82-423; amd. Sec. 25, Ch. 7, L. 1979; amd. Sec. 1, Ch. 7, L. 1983; amd. Sec. 1, Ch. 291, L. 1983.

44-4-104 through 44-4-110 reserved.

44-4-111. Request for special counsel services. (1) Except as provided in subsection (2), the training coordinator may act as special counsel upon request of the county attorney with the approval of the governing body of a county.

(2) If a case involves the prosecution of a member of the governing body of a county or a person related to him by consanguinity within the fourth degree or affinity within the second degree, the coordinator may, with the consent of the attorney general, act as special counsel upon request of the county attorney without approval of the governing body of the county.

History: En. Sec. 2, Ch. 7, L. 1983.

Cross-References

Affinity defined, 1-1-219.

Representation, 72-2-204.

44-4-112. County payment for special counsel services. Whenever the training coordinator acts as special counsel as provided in 44-4-111, the department of justice shall charge the county a reasonable hourly fee for the training coordinator's services. Upon receipt of payment for these services, the department shall deposit these funds into the state general fund.

History: En. Sec. 3, Ch. 7, L. 1983.

Part 2

Confidential License Plates and Registrations

Part Cross-References

Registration of motor vehicles, Title 61, ch. 3.

Records of Department of Justice open to public inspection, 61-3-101.

44-4-201. Authorization to issue confidential plates and registrations. (1) The attorney general may issue confidential license plates and certificates of registration to bona fide law enforcement agencies, except the highway patrol, within the state of Montana.

(2) The attorney general may issue confidential license plates and certificates of registration for purposes other than law enforcement.

(3) Confidential license plates and certificates of registration are exempt from all requirements for public disclosure.

(4) The issuance of confidential registrations is subject to the provisions of this part.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(part); amd. Sec. 1, Ch. 653, L. 1989.

44-4-202. Authority of attorney general to adopt rules. The attorney general may adopt rules necessary to implement the provisions of this part and to prevent the abuse or misuse of confidential registration plates.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(7).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, parts 1 through 3.

44-4-203. Registration records. (1) The registration records of each vehicle so registered shall be maintained by the department of justice.

(2) The contents of such confidential registration records may be disclosed only at the discretion of the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(4), (5).

44-4-204. Applications for confidential plates and registrations. Applications by law enforcement agencies operating within the state must be made to the attorney general on a form and in a manner prescribed by the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(1).

44-4-205. Use of confidential plates and registrations. (1) Such license plates and registrations may be displayed and used only during and in the furtherance of official law enforcement investigations or for purposes as authorized in 44-4-201(2).

(2) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(2), (3); amd. Sec. 2, Ch. 653, L. 1989.

44-4-206. Revocation. Such registrations may be revoked at any time by the attorney general at his discretion. On delivery of notice of revocation, the registrant shall, within 24 hours, deliver such license plates and certificate of registration to the attorney general or his duly appointed agent.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(6).

Part 3
Board of Crime Control

Part Cross-References

Creation and composition, 2-15-2006.

Training program required for reserve officers, 7-32-214.

Employment standards of Board, 7-32-303.

Qualifications of policemen, 7-32-4112.

44-4-301. Functions. (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board may:

(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, and public safety communications officers; and

(b) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, and public safety communications officers.

(3) The board may require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, establish minimum standards for the certification of motor carrier services division officers appointed under 61-12-201, and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(4); amd. Sec. 1, Ch. 345, L. 1989; amd. Sec. 4, Ch. 58, L. 1991; amd. Sec. 1, Ch. 809, L. 1991; amd. Sec. 1, Ch. 161, L. 1993; amd. Sec. 3, Ch. 437, L. 1993.

Cross-References

Law Enforcement Academy, Title 44, ch. 10.

44-4-302. Definitions. As used in 44-4-301 and this section, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(3) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(4) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

(5) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours.

History: En. Sec. 2, Ch. 345, L. 1989; amd. Sec. 5, Ch. 58, L. 1991.

Parts 4 through 8 reserved

Part 9

Railroad Corporation Special Peace Officers

Part Cross-References

Attorney General — general duties, 2-15-501.

Railroad corporations, Title 69, ch. 14, part 5.

Railroad personnel, Title 69, ch. 14, part 10.

44-4-901. Attorney general — appointment of special peace officers. The attorney general may appoint special peace officers as provided in this part.

History: En. Sec. 1, Ch. 552, L. 1987.

44-4-902. Application for appointment. A class I railroad corporation, as defined by the interstate commerce commission in part 1201 of 49 CFR, desiring the appointment of an officer or employee as a special peace officer shall apply to the attorney general. The application must state the name, age, and place of residence of the person applying for appointment. The applicant must have at least 3 years of experience as a class I railroad peace officer or have completed a training course at an approved law enforcement academy, or meet the qualifications described in 7-32-303 and adopted under 44-4-301. The application must be signed by the applicant and a managing officer of the railroad corporation. The managing officer signing the application shall at the same time submit an affidavit to the effect that he is acquainted with the person seeking appointment, that he believes him to be of good moral character, and that he is of such character and experience that he can be safely entrusted with the powers and duties of a special peace officer.

History: En. Sec. 2, Ch. 552, L. 1987.

44-4-903. Limitations on special peace officer. A person appointed and sworn as a special peace officer shall when on duty have the power and authority of a peace officer but may exercise such power and authority only in the protection of the property of the class I railroad corporation employing him.

History: En. Sec. 3, Ch. 552, L. 1987.

44-4-904. Responsibility of corporation. The class I railroad corporation employing a special peace officer is solely responsible for the compensation of the special peace officer and is civilly liable for any action of the officer arising out of his actions as a special peace officer. The class I railroad corporation employing a special peace officer shall hold the state, its subdivisions, and the officers and employees thereof harmless and indemnify them from any claim or liability, including costs and attorney fees, arising out of any action of a special peace officer or the certification of the special peace officer by the state.

History: En. Sec. 4, Ch. 552, L. 1987.

CHAPTER 5

CRIMINAL JUSTICE INFORMATION

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44-5-515. Protection of individual privacy.

Part 1
General Provisions

44-5-101. Short title. This chapter may be cited as the "Montana Criminal Justice Information Act of 1979".

History: En. Sec. 1, Ch. 525, L. 1979.

44-5-102. Purpose. The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in confidential and nonconfidential criminal justice information collection, storage, and dissemination.

History: En. Sec. 2, Ch. 525, L. 1979; amd. Sec. 9, Ch. 145, L. 1985.

44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless the information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice;

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

History: En. Sec. 3, Ch. 525, L. 1979; amd. Sec. 1, Ch. 804, L. 1991; amd. Sec. 1, Ch. 431, L. 1993.

Cross-References

Registration of sexual offenders, Title 46, ch. 23, part 5.

44-5-104. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by this chapter unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by this chapter, which applies only when information may be disclosed consistent with such laws.

History: En. Sec. 4, Ch. 525, L. 1979.

Cross-References

Right to know and right of privacy, Art. II, sec. 9 and 10, Mont. Const.

Public records, Title 2, ch. 6.

44-5-105. Department of justice — powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter.

History: En. Sec. 23, Ch. 525, L. 1979; amd. Sec. 2, Ch. 603, L. 1993.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

44-5-106 through 44-5-110 reserved.

44-5-111. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of this chapter.

History: En. Sec. 24, Ch. 525, L. 1979.

44-5-112. Sanctions. The sanctions provided in 44-2-205 apply to any knowing or purposeful violation of this chapter.

History: En. Sec. 22, Ch. 525, L. 1979.

Cross-References

Knowingly and purposely defined, 1-1-204, 45-2-101.

Part 2
Collection and Processing

Part Cross-References

Public records generally, Title 2, ch. 6, part 1.

44-5-201. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

History: En. Sec. 5, Ch. 525, L. 1979.

44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of corrections; and

(c) the department of justice.

(2) The department of corrections may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, the person shall appear before the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of initial appearance in court to answer the information or indictment against the person.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if the accused has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless the individual is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken must be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, in the following circumstances:

(a) upon order of the court that had jurisdiction; or

(b) upon the request of the individual when the individual was released without the filing of charges or when the charges did not result in a conviction.

History: En. Sec. 6, Ch. 525, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 804, L. 1991; amd. Sec. 197, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1)(b) and (2) substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Requiring fingerprints for alcoholic beverage license, 16-4-403.

Fingerprints and photographs of youths, 41-5-304.

Right not to be fingerprinted, 53-20-143, 53-21-143.

Rights concerning photographs, 53-20-144, 53-21-144.

44-5-203 through 44-5-210 reserved.

44-5-211. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

History: En. Sec. 7, Ch. 525, L. 1979.

44-5-212. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

History: En. Sec. 8, Ch. 525, L. 1979.

44-5-213. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of corrections shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries must be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry must still be made and the response must be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

History: **En. Sec. 9, Ch. 525, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 198, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 546 in (4) substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

44-5-214. Inspection or transfer of criminal history records. (1) An individual or the individual's agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from the agent's principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or the individual's agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or the individual's authorized agent. If a machine for making copies is not reasonably available, the individual or the individual's agent may make handwritten copies. A charge may be made by the agency for the cost of supplying the copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

History: **En. Sec. 19, Ch. 525, L. 1979; amd. Sec. 3, Ch. 603, L. 1993.**

Cross-References

Dissemination of public criminal justice information, 44-5-301.

Dissemination of criminal history records, 44-5-302.

Dissemination of confidential criminal justice information, 44-5-303.

Dissemination of copied or inspected records, 44-5-305.

44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission

is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

History: En. Sec. 20, Ch. 525, L. 1979.

Cross-References

Torts by governmental entities generally, Title 2, ch. 9, parts 1 and 3.

Record preservation, 44-5-212.

Part 3

Dissemination

44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

History: En. Sec. 10, Ch. 525, L. 1979.

Cross-References

Registration of sexual offenders, Title 46, ch. 23, part 5.

44-5-302. Dissemination of criminal history record information that is not public criminal justice information. (1) Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(a) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(b) a district court considers dissemination necessary;

(c) the information is disseminated in compliance with 44-5-304; or

(d) the agency receiving the information is authorized by law to receive it.

(2) The department of justice and other criminal justice agencies may accept fingerprints of applicants for admission to the state bar of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the department or agency by the state bar, exchange available state, multistate, local, federal (to the extent allowed by federal law), and other criminal history record information with the state bar for licensing purposes.

History: En. Sec. 11, Ch. 525, L. 1979; amd. Sec. 1, Ch. 15, L. 1989.

44-5-303. Dissemination of confidential criminal justice information. (1) Except as provided in subsection (2), dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure.

(2) If the prosecutor determines that dissemination of confidential criminal justice information would not jeopardize a pending investigation or other criminal proceeding, the information may be disseminated to a victim of the offense by the prosecutor or by the investigating law enforcement agency after consultation with the prosecutor.

(3) Unless otherwise ordered by a court, a person or criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

History: En. Sec. 12, Ch. 525, L. 1979; amd. Sec. 3, Ch. 804, L. 1991; amd. Sec. 2, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 at beginning of (1) inserted exception clause; inserted (2) allowing dissemination to a victim; at beginning of (3) inserted "Unless otherwise ordered by a court, a person or"; and made minor changes in style.

Cross-References

Inspection or transfer of criminal history records, 44-5-214.

44-5-304. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with this chapter.

History: En. Sec. 13, Ch. 525, L. 1979.

44-5-305. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

History: En. Sec. 21, Ch. 525, L. 1979.

44-5-306 through 44-5-310 reserved.

44-5-311. Nondisclosure of information about victim. (1) If a victim of an offense requests confidentiality, a criminal justice agency may not disseminate, except to another criminal justice agency, the address, telephone number, or place of employment of the victim or a member of the victim's family unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

(2) The court may not compel a victim or a member of the victim's family who testifies in a criminal justice proceeding to disclose on the record in open court a residence address or place of employment unless the court determines that disclosure of the information is necessary.

(3) A criminal justice agency may not disseminate to the public any information directly or indirectly identifying the victim of an offense committed under 45-5-502, 45-5-503, 45-5-504, or 45-5-507 unless disclosure is of the location of the crime scene, is required by law, is necessary for law enforcement purposes, or is authorized by a district court upon a showing of good cause.

History: En. Sec. 3, Ch. 125, L. 1995.

Part 4
System Security

Part Cross-References

Right to know and right of privacy, Art. II, sec. 9 and 10, Mont. Const.

Public records, Title 2, ch. 6.

44-5-401. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

History: En. Sec. 14, Ch. 525, L. 1979.

44-5-402. Automated equipment. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: **En. Sec. 15, Ch. 525, L. 1979.**

44-5-403. Computer programming. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

History: **En. Sec. 16, Ch. 525, L. 1979.**

44-5-404. Manual equipment. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

History: **En. Sec. 17, Ch. 525, L. 1979.**

44-5-405. Personnel. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as person-

nel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an inservice training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: En. Sec. 18, Ch. 525, L. 1979.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Official misconduct, 45-7-401.

Part 5

Criminal Intelligence Information Section

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

General duties of Attorney General, 2-15-501.

44-5-501. Creation of criminal intelligence information section — advisory council. (1) The department of justice may create a criminal intelligence information section.

(2) (a) If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122, consisting of one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the judiciary committee of either the house of representatives or the senate, and a citizen at large.

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the department involved in criminal intelligence or criminal investigation work.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(e) The department shall provide staff and support services for the advisory council.

History: En. Sec. 1, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

44-5-502. Definitions. In this part the following definitions apply:

(1) "Advisory council" means the criminal intelligence information advisory council provided for in 44-5-501.

(2) "Section" means the criminal intelligence information section provided for in 44-5-501.

History: **En. Sec. 2, Ch. 145, L. 1985.**

44-5-503. Duties of section. The section may not initiate investigations to gather criminal intelligence information, but subject to standards and procedures provided by this part and to other limitations imposed by law, the section shall:

(1) establish and maintain liaison with participating law enforcement agencies to foster a meaningful exchange of criminal intelligence information;

(2) develop and maintain a system for collecting, reviewing, storing, referencing, indexing, and disseminating criminal intelligence information;

(3) receive and collect information from participating law enforcement agencies;

(4) develop an analytical capability to provide useful strategic and tactical intelligence reports;

(5) maintain the integrity and security of all information collected by the section; and

(6) develop methods of evaluating the effectiveness of the section in accomplishing its goals and in safeguarding the privacy of all individuals about whom the section has information.

History: **En. Sec. 3, Ch. 145, L. 1985.**

Cross-References

Teletypewriter communications system, Title 44, ch. 2, part 3.

Criminal justice information — collection and processing, Title 44, ch. 5, part 2.

44-5-504. Section standards and procedures. The attorney general, in conjunction with the department of justice and after considering recommendations of the advisory council, shall adopt standards and procedures for the operation of the section. The standards and procedures must ensure compliance with this part by the section and must include safeguards of individual privacy rights as provided in this chapter.

History: **En. Sec. 8, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.**

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

44-5-505. Section supervisor and personnel. (1) The attorney general shall designate a section supervisor.

(2) The department of justice may employ necessary personnel for the efficient and secure operation of the section, subject to approval of the personnel by the attorney general.

History: **En. Sec. 4, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.**

44-5-506. Participating agencies. (1) Agencies eligible for participation in the section are:

(a) municipal police departments;

(b) sheriff's departments; and

(c) sections of the department of justice engaged in criminal investigation.

(2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under this part.

History: **En. Sec. 6, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.**

Cross-References

Sheriff's department, Title 7, ch. 32, part 21.

Municipal police force, Title 7, ch. 32, part 41.

Criminal investigation, Title 44, ch. 2, part 1.

44-5-507 through 44-5-510 reserved.

44-5-511. Functions of advisory council. The advisory council shall:

(1) recommend general policies for the operation of the section;

(2) recommend the approval or denial of an application from an eligible agency for participation in the section;

(3) recommend the suspension of a participant agency for due cause; and

(4) recommend, if appropriate, the reinstatement of a suspended participant agency.

History: En. Sec. 5, Ch. 145, L. 1985.

Cross-References

Creation of advisory councils, 2-15-122.

44-5-512 through 44-5-514 reserved.

44-5-515. Protection of individual privacy. The advisory council shall review and evaluate the implementation of the section's safeguards of individual privacy rights adopted pursuant to 44-5-504 and periodically inspect all records relating to dissemination of information to determine whether they are in compliance with this part and with the standards and procedures adopted by the section. The advisory council shall make an annual report to the attorney general.

History: En. Sec. 7, Ch. 145, L. 1985.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

CHAPTER 6

DNA RECORDS

Part 1 — DNA Index

44-6-101. Definitions.
44-6-102. Establishment of DNA identification index.
44-6-103. Collection of samples and maintenance of data.
44-6-104 and 44-6-105 reserved.
44-6-106. Release of DNA records.
44-6-107. Expungement of DNA records.
44-6-108. Confidentiality of records of DNA testing.
44-6-109 reserved.
44-6-110. Rulemaking authority.

Part 1

DNA Index

Part Compiler's Comments

Report to Legislature: Section 9, Ch. 251, L. 1995, provided: "The department of justice shall report to the 56th legislature on the success of the program created by [sections 1 through 7] [this part], including the number of samples analyzed and the number of cases successfully prosecuted using the DNA identification index created by [sections 1 through 7] [this part]."

Effective Date: Section 11, Ch. 251, L. 1995, provided: "[This act] [44-6-101 through 44-6-103, 44-6-106 through 44-6-108, and 44-6-110] is effective on passage and approval." Approved March 27, 1995.

44-6-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of justice provided for in 2-15-2001.

(2) "DNA" means deoxyribonucleic acid.

(3) "DNA identification index" means the DNA identification record system established under 44-6-102.

(4) "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

(5) "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

(6) "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

(7) "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

(8) "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

(9) "Violent offense" means an offense contained in 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103 or an equivalent offense under federal law or the law of another state.

History: En. Sec. 1, Ch. 251, L. 1995.

44-6-102. Establishment of DNA identification index. (1) The department shall establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records. The DNA identification index is the central repository for DNA records in the state of Montana.

(2) The DNA identification index must include:

(a) DNA records for an individual convicted of a sexual or violent offense; and

(b) analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.

(3) The DNA identification index and the DNA testing done by a forensic DNA laboratory must be compatible with the systems of DNA identification used by other criminal justice agencies or private testing laboratories to the extent necessary to permit the exchange of DNA information.

(4) The DNA records collected and stored in the DNA identification index may contain only information relating to the identification of individuals. Information that identifies a person that is the subject of a record must be limited to the information that is necessary to pursue criminal investigations and to support statistical interpretation of results.

(5) The DNA identification index may be used:

(a) by law enforcement agencies for purposes of identification in the course of criminal investigations and proceedings;

(b) to assist in the identification of human remains, including identification of missing persons; and

(c) if information allowing a person to be identified is removed, for a population statistics data base and for identification, research, and protocol development for forensic DNA analysis and quality control.

History: En. Sec. 2, Ch. 251, L. 1995.

44-6-103. Collection of samples and maintenance of data. (1) Following entry of judgment, a person convicted of a sexual or violent offense or a youth found under 41-5-521 to have committed a sexual or violent offense shall provide to a person or entity designated by the county attorney a sample of blood for DNA analysis to determine identification characteristics specific to the person.

(2) The blood sample must be collected, stored, and sent by the person or entity designated by the county attorney under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of public health and human services.

(3) The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

History: En. Sec. 3, Ch. 251, L. 1995.

Compiler's Comments

Code Commissioner Change: Pursuant to sec. 3, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Health and Environmental Sciences.

44-6-104 and 44-6-105 reserved.

44-6-106. Release of DNA records. (1) The DNA records contained in the DNA identification index may be released only for the following purposes:

(a) to federal, state, and local law enforcement agencies for law enforcement identification purposes;

(b) for criminal defense purposes, to a defendant for whom there is a DNA record, who is also entitled to samples and analyses held as part of the record;

(c) to assist in the identification of human remains, including missing persons; and

(d) if information allowing a person to be identified is removed, for a population statistics data base and for identification, research, and protocol development for forensic DNA analysis and quality control.

(2) Requests for DNA records must be in writing, signed by the requesting party, and maintained on file in the DNA identification index in accordance with rules adopted by the department.

(3) A defendant in a criminal proceeding is entitled to information in the DNA identification index relating to the number of requests previously made for comparison searches relating to the defendant and the names of the requesting parties.

History: En. Sec. 4, Ch. 251, L. 1995.

44-6-107. Expungement of DNA records. If a conviction of a sexual or violent offense is reversed, the record relating to the offense must be expunged from the DNA identification index. The county attorney of the county in which the conviction occurred shall notify the department of a reversal of a conviction for a sexual or violent offense.

History: En. Sec. 5, Ch. 251, L. 1995.

44-6-108. Confidentiality of records of DNA testing. Except as provided in this part or unless the person that they relate to consents to their release, records, findings, and results of DNA testing are confidential criminal justice information subject to the dissemination provisions of Title 44, chapter 5.

History: En. Sec. 6, Ch. 251, L. 1995.

44-6-109 reserved.

44-6-110. Rulemaking authority. The department shall adopt rules for the handling, collection, transportation, sampling, and storage of blood samples and to further define the term "marker". The rules concerning the handling of blood samples must ensure protection of the health of persons who may come into contact with the samples.

History: En. Sec. 7, Ch. 251, L. 1995.

CHAPTERS 7 THROUGH 9

RESERVED

CHAPTER 10

LAW ENFORCEMENT ACADEMY

Part 1 — General Provisions

44-10-101. Short title.
44-10-102. Purpose.
44-10-103. Establishment of academy.

Part 2 — Government of Academy

44-10-201. Department of justice to govern academy.
44-10-202. Powers and duties of department.

44-10-203. Sessions to be determined annually.

Part 3 — Officers Who Attend Academy

44-10-301. Eligibility.
44-10-302. Retention of employment rights.
44-10-303. Expenditure of funds by local governments authorized.

Chapter Cross-References

Training in victim assistance, 46-24-102.

Part 1

General Provisions

44-10-101. Short title. This chapter may be cited as the "Montana Law Enforcement Academy Act".

History: En. Sec. 1, Ch. 7, L. 1959; R.C.M. 1947, 75-5201.

44-10-102. Purpose. The purpose of this chapter shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers and other qualified individuals with a means of securing training in the field of law enforcement.

History: En. Sec. 2, Ch. 7, L. 1959; R.C.M. 1947, 75-5202; amd. Sec. 1, Ch. 40, L. 1989.

44-10-103. Establishment of academy. There is hereby established a Montana law enforcement academy.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part); amd. Sec. 1, Ch. 431, L. 1985.

Part 2

Government of Academy

44-10-201. Department of justice to govern academy. The Montana law enforcement academy shall be governed by the department of justice.

History: En. Sec. 5, Ch. 7, L. 1959; amd. Sec. 1, Ch. 28, L. 1961; amd. Sec. 1, Ch. 88, L. 1969; R.C.M. 1947, 75-5205.

44-10-202. Powers and duties of department. The department of justice shall have the power and it shall be its duty to:

(1) establish qualifications for admission to the academy;

(2) select from among qualified applicants those officers and other individuals who are to attend the academy each year;

(3) determine the curriculum and methods of training for officers and other individuals attending the academy;

(4) select and hire staff as it considers necessary to implement this chapter;

(5) establish rules for the conduct of officers and other individuals enrolled at the academy;

(6) award appropriate certificates to officers and other individuals who successfully complete their training;

(7) provide for the keeping of permanent records of enrollment, attendance, and graduation and other records as the department considers necessary;

(8) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.

(9) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;

(10) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations.

History: En. Sec. 6, Ch. 7, L. 1959; amd. Sec. 2, Ch. 233, L. 1967; amd. Sec. 1, Ch. 331, L. 1971; R.C.M. 1947, 75-5206; amd. Sec. 2, Ch. 431, L. 1985; amd. Sec. 2, Ch. 40, L. 1989.

44-10-203. Sessions to be determined annually. The academy shall be in session for a period to be annually determined by the department of justice.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part).

Part 3

Officers Who Attend Academy

44-10-301. Eligibility. All bona fide Montana law enforcement officers and other individuals who meet the qualifications established by the department of justice shall be eligible to apply for admission to the Montana law enforcement academy.

History: En. Sec. 4, Ch. 7, L. 1959; R.C.M. 1947, 75-5204; amd. Sec. 3, Ch. 40, L. 1989.

44-10-302. Retention of employment rights. All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority, or other rights by reason of attendance at the academy.

History: En. Sec. 7, Ch. 7, L. 1959; R.C.M. 1947, 75-5207.

44-10-303. Expenditure of funds by local governments authorized. The expenditure of funds by any city, town, municipality, or county for the board, room, and travel expenses of the officers attending the academy shall be a lawful expenditure.

History: En. Sec. 8, Ch. 7, L. 1959; amd. Sec. 3, Ch. 233, L. 1967; R.C.M. 1947, 75-5208.

CHAPTER 11

MUTUAL ASSISTANCE RIGHTS OF ASSISTING OFFICERS

Part 1 — General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers.
44-11-102. Liability of assisted entity for obligation resulting from assistance.

Part 2 — Rights of Employment

44-11-201. Retention of rights of employment.
44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement.

Part 3 — Interstate Law Enforcement Mutual Aid Act

44-11-301. Short title.
44-11-302. Purpose.
44-11-303. Definitions.
44-11-304. Authorization to enter agreement — general content — authority of peace officer.
44-11-305. Detailed content of agreement.
44-11-306. Right of state in actions involving agreements.
44-11-307. Agreement not to relieve agency of duties.
44-11-308. Limitation of powers.
44-11-309. Submission of agreement to attorney general.
44-11-310. Filing of agreement.
44-11-311. Authorization to appropriate funds for purpose of agreement.
44-11-312. Effect of other law.

Part 1

General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers. A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while in the jurisdiction of the requesting officer or entity and while on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity and is under the authority of the requesting officer or entity.

History: En. 11-1851 by Sec. 1, Ch. 337, L. 1977; R.C.M. 1947, 11-1851; amd. Sec. 1, Ch. 22, L. 1985.

Cross-References

Technical assistance by County Attorney Training Coordinator to law enforcement official, 44-4-103.

44-11-102. Liability of assisted entity for obligation resulting from assistance. A law enforcement entity requesting assistance under 44-11-101 shall indemnify the assisting peace officer, his legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 2-9-305 that may result from the assistance furnished.

History: En. 11-1854 by Sec. 4, Ch. 337, L. 1977; R.C.M. 1947, 11-1854.

Part 2

Rights of Employment

44-11-201. Retention of rights of employment. A peace officer rendering assistance under 44-11-101 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for such service as for service rendered within the law enforcement entity in which he is normally employed.

History: En. 11-1852 by Sec. 2, Ch. 337, L. 1977; R.C.M. 1947, 11-1852.

44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement. (1) The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while they are rendering assistance.

(2) If it so requests, the law enforcement entity must be reimbursed by the law enforcement entity that requested the services for all payments made for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract.

History: En. 11-1853 by Sec. 3, Ch. 337, L. 1977; R.C.M. 1947, 11-1853; amd. Sec. 26, Ch. 7, L. 1979.

Part 3

Interstate Law Enforcement Mutual Aid Act

44-11-301. Short title. This part shall be known and may be cited as the "Interstate Law Enforcement Mutual Aid Act".

History: En. Sec. 1, Ch. 318, L. 1983.

44-11-302. Purpose. It is the purpose of this part to permit one or more law enforcement agencies of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more law enforcement agencies of any other state or the United States in order to facilitate and coordinate efficient, cooperative enforcement efforts directed at mutual law enforcement problems transcending jurisdictional boundaries and to insure the prompt and effective delivery of law enforcement and emergency services in areas that, due to geographic remoteness, population sparsity, and economic and other factors are in need of an increased law enforcement presence.

History: En. Sec. 2, Ch. 318, L. 1983.

44-11-303. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Law enforcement agency" means a public agency lawfully established by statute or executive order that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, or game laws.

(2) "Law enforcement agency of this state" or "law enforcement agency of another (or any other) state" includes, respectively, a law enforcement agency of a political subdivision of this state and a law enforcement agency of a political subdivision of another state.

(3) "Mutual aid agreement" or "agreement" means an agreement between two or more law enforcement agencies, consistent with the purposes of this part.

(4) "Party law enforcement agency" means a law enforcement agency that is a party to a mutual aid agreement as set forth in this part.

(5) "Peace officer" has the meaning as defined in 46-1-202.

History: En. Sec. 3, Ch. 318, L. 1983; amd. Sec. 256, Ch. 800, L. 1991.

44-11-304. Authorization to enter agreement — general content — authority of peace officer. (1) Any one or more law enforcement agencies of this state may enter into a mutual aid agreement with any one or more law enforcement agencies of any other state or the United States to provide the law enforcement or emergency services that all of the parties are authorized by law to perform. If required by applicable law, the agreement must be authorized and approved by the governing body of each party to the agreement.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) Subject to 44-11-308, a mutual aid agreement may grant a peace officer of any party law enforcement agency acting within the territorial jurisdiction of any other party law enforcement agency authority to act as if he were a duly appointed and qualified peace officer of the law enforcement agency he is assisting.

History: En. Sec. 4, Ch. 318, L. 1983.

44-11-305. Detailed content of agreement. The agreement authorized by 44-11-304 must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) the minimum standards for law enforcement personnel implementing the provisions of the agreement;

(9) the respective liability of each party to the agreement for the actions of law enforcement officers when acting under the provisions of the agreement;

(10) the minimum insurance required of each party to the agreement;

(11) the exact chain of command or delegation of authority to be followed by law enforcement officials acting under the provisions of the agreement;

(12) the precise enforcement authority that the peace officers of each party law enforcement agency may exercise; and

(13) any other necessary and proper matters.

History: En. Sec. 5, Ch. 318, L. 1983.

44-11-306. Right of state in actions involving agreements. In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more law enforcement agencies of political subdivisions of this state and one or more law enforcement agencies of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any law enforcement agency whose default, failure, performance, or other conduct caused or contributed to any liability incurred by this state.

History: **En. Sec. 6, Ch. 318, L. 1983.**

44-11-307. Agreement not to relieve agency of duties. No agreement made under this part may relieve any law enforcement agency of this state of any duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

History: **En. Sec. 7, Ch. 318, L. 1983.**

44-11-308. Limitation of powers. Except for the right granted by this part to jointly exercise powers, this part does not authorize any law enforcement agency of this state to exercise any power that it is not otherwise authorized to exercise.

History: **En. Sec. 8, Ch. 318, L. 1983.**

44-11-309. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this part unless he finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the party law enforcement agencies.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved by him.

History: **En. Sec. 9, Ch. 318, L. 1983.**

44-11-310. Filing of agreement. Within 20 days after approval by the attorney general, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

History: **En. Sec. 10, Ch. 318, L. 1983.**

44-11-311. Authorization to appropriate funds for purpose of agreement. Any law enforcement agency of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

History: **En. Sec. 11, Ch. 318, L. 1983.**

44-11-312. Effect of other law. The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

History: **En. Sec. 12, Ch. 318, L. 1983.**

CHAPTER 12

SEIZURES RELATED TO CONTROLLED SUBSTANCES

Part 1 — General Provisions

44-12-101. Definition of controlled substance.
44-12-102. Things subject to forfeiture.
44-12-103. When property may be seized.
44-12-104. Summary forfeiture of certain controlled substances.

Part 2 — Procedure

44-12-201. Petition to institute forfeiture proceedings — summons — service.
44-12-202. Answer to allegations concerning use of property.
44-12-203. Presumption — procedure following answer or expiration of time for answering.
44-12-204. Proof required or permitted at hearing.
44-12-205. Disposition of property following hearing.
44-12-206. Disposition of proceeds of sale.

Chapter Cross-References

Seizure, forfeiture, and sale of alcoholic beverages, 16-6-106, 16-6-107.

Dangerous drugs, Title 45, ch. 9.

Search and seizure, Title 46, ch. 5.

Health and safety — controlled substances, Title 50, ch. 32.

Part 1

General Provisions

44-12-101. Definition of controlled substance. As used in this chapter, "controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

History: En. Sec. 1, Ch. 529, L. 1979.

44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with his actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana.

History: En. Sec. 2, Ch. 529, L. 1979; amd. Sec. 8, Ch. 481, L. 1981; amd. Sec. 1, Ch. 180, L. 1983; amd. Sec. 1, Ch. 476, L. 1987; amd. Sec. 1, Ch. 652, L. 1989.

44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the offices of his law enforcement agency, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1.

History: En. Sec. 3, Ch. 529, L. 1979; amd. Sec. 9, Ch. 481, L. 1981; amd. Sec. 1, Ch. 489, L. 1989.

44-12-104. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of this chapter are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

History: En. Sec. 4, Ch. 529, L. 1979.

Part 2
Procedure

Part Cross-References

Forfeiture of motor vehicle for third drug-related or alcohol-related conviction, 61-8-714, 61-8-722.

44-12-201. Petition to institute forfeiture proceedings — summons — service. A peace officer or an officer of an agency that seizes any property other than controlled substances under the provisions of this chapter shall, within 45 days of the seizure, file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the same to be served upon all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the department of justice.

History: En. Sec. 5, Ch. 529, L. 1979; amd. Sec. 1, Ch. 563, L. 1985.

Cross-References

Service of process, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

44-12-202. Answer to allegations concerning use of property. Within 20 days after the service of the petition and summons or publication of the summons, as provided in 44-12-201, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property described in the petition to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: En. Sec. 6, Ch. 529, L. 1979; amd. Sec. 2, Ch. 563, L. 1985.

Cross-References

Service of process, answer, Rules 4 and 12, M.R.Civ.P. (see Title 25, ch. 20).

44-12-203. Presumption — procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102, except property listed in 44-12-102(1)(i).

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, the forfeiture proceedings must be set for hearing without a jury no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of the petition and summons.

History: En. Sec. 7, Ch. 529, L. 1979; amd. Sec. 2, Ch. 180, L. 1983; amd. Sec. 3, Ch. 563, L. 1985; amd. Sec. 2, Ch. 652, L. 1989; amd. Sec. 42, Ch. 16, L. 1991.

44-12-204. Proof required or permitted at hearing. In order to rebut the presumption of forfeiture:

(1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged;

(2) an owner of property listed in 44-12-102(1)(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent;

(3) a claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

History: En. Sec. 8, Ch. 529, L. 1979; amd. Sec. 3, Ch. 180, L. 1983.

44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property, if it is sold, must be sold at public auction by the law enforcement agency that seized the property in the same manner provided by law for the sale of property under execution or the law enforcement agency may return the property to the holder of the security interest without proceeding with an auction. The property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons.

History: En. Sec. 9, Ch. 529, L. 1979; amd. Sec. 4, Ch. 180, L. 1983; amd. Sec. 2, Ch. 476, L. 1987; amd. Sec. 2, Ch. 489, L. 1989.

Cross-References

Property subject to execution, Title 25, ch. 13, part 5.

Property exempt from execution, Title 25, ch. 13, part 6.

Sale on execution, Title 25, ch. 13, part 7.

Validity of security agreement and rights of parties thereto, Title 30, ch. 9, part 2.

Alienability of debtor's rights — judicial process, 30-9-311.

44-12-206. Disposition of proceeds of sale. (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(c) through (1)(e);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and (1)(e);

(d) if the property was seized by an employee of the state, the remainder, if any, to the account established in subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture account must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug laws enforcement and education concerning drugs.

(3) Net proceeds received by the state under subsections (1)(d) and (1)(e) must be deposited in an account in the state special revenue fund to the credit of the department of justice. The department may expend the money in the account only for purposes of enforcement of drug laws. An amount up to $125,000 each year is statutorily appropriated, as provided in 17-7-502, to the attorney general for enforcement of drug laws. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.

History: En. Sec. 10, Ch. 529, L. 1979; amd. Sec. 5, Ch. 180, L. 1983; amd. Sec. 3, Ch. 476, L. 1987; amd. Sec. 2, Ch. 690, L. 1991; amd. Sec. 32, Ch. 349, L. 1993; amd. Sec. 64, Ch. 545, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 545 deleted (4) that read: "(4) The attorney general shall provide the legislative finance committee and the legislative auditor with a detailed, written report of the amounts and property credited to the account no later than 4 months after the end of each fiscal year. The attorney general may not disclose any information that would compromise any investigation or prosecution." Amendment effective July 1, 1995.

Cross-References

Proceeds — secured party's rights on disposition of collateral, 30-9-306.

Priority of certain liens arising by operation of law, 30-9-310.

Priorities among conflicting security interests in the same collateral, 30-9-312.

CHAPTER 13

SPECIAL LAW ENFORCEMENT ASSISTANCE FUNDING

Part 1 — Special Law Enforcement Assistance Account

44-13-101. Law enforcement assistance account created.
44-13-102. Federal forfeitures deposited in account.
44-13-103. Limitations on use of special law enforcement assistance account.

Part 1

Special Law Enforcement Assistance Account

44-13-101. Law enforcement assistance account created. There is an account in the federal special revenue fund defined in 17-2-102 to be known as the special law enforcement assistance account.

History: En. Sec. 1, Ch. 625, L. 1985.

44-13-102. Federal forfeitures deposited in account. Except as provided in 46-23-1032, property and money forfeited under federal law and provided to the state by the federal government to support state and local law enforcement programs must be deposited to the special law enforcement assistance account established in 44-13-101. An amount up to $125,000 each fiscal year is statutorily appropriated, as provided in 17-7-502, to the attorney general for the support of state and local law enforcement programs. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.

History: En. Sec. 2, Ch. 625, L. 1985; amd. Sec. 3, Ch. 690, L. 1991; amd. Sec. 2, Ch. 219, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 219 at beginning inserted exception clause. Amendment effective July 1, 1995.

44-13-103. Limitations on use of special law enforcement assistance account. (1) After property is credited to the account, the attorney general may:

(a) transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;

(b) sell the property by public sale;

(c) destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;

(d) compromise and pay claims against the property; and

(e) make any other disposition of the property authorized by law.

(2) Money and proceeds from property credited to the account may be used by the attorney general for:

(a) the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for contract services and reimbursement to a federal, state, or local agency for its expenses;

(b) the payment of awards for information or assistance leading to a criminal proceeding or a civil forfeiture proceeding;

(c) the compromise and payment of claims against property;

(d) the payment of sums for criminal investigation purposes, including but not limited to:

(i) payment of informants;

(ii) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(iii) use by undercover agents as gambling front money; and

(iv) payment of overtime to state or local law enforcement officers when engaged in special criminal investigations;

(e) the payment of funds into the account created by 53-9-109; and

(f) matching federal grants for criminal investigation purposes.

History: En. Sec. 3, Ch. 625, L. 1985; amd. Sec. 1, Ch. 206, L. 1987; amd. Sec. 36, Ch. 112, L. 1991; amd. Sec. 33, Ch. 349, L. 1993; amd. Sec. 65, Ch. 545, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 545 deleted (3) that read: "(3) The attorney general shall submit to the legislative finance committee and the legislative auditor a detailed written report of the amounts and property credited to the account and of the disposition of money and property credited to the account, but may not make any disclosure that would compromise any investigation or prosecution." Amendment effective July 1, 1995.

TITLE 45

CRIMES

Ch.
1. General Preliminary Provisions.
2. General Principles of Liability.
3. Justifiable Use of Force.
4. Inchoate Offenses.
5. Offenses Against the Person.
6. Offenses Against Property.
7. Offenses Against Public Administration.
8. Offenses Against Public Order.
9. Dangerous Drugs.
10. Model Drug Paraphernalia Act.

CHAPTER 1

GENERAL PRELIMINARY PROVISIONS

Part 1 — Construction and Applicability

45-1-101. Short title.
45-1-102. General purposes and principles of construction.
45-1-103. Application to offenses committed before and after enactment.
45-1-104. Other limitations on applicability.

Part 2 — Classification and Limitations

45-1-201. Classification of offenses.
45-1-202 through 45-1-204 reserved.
45-1-205. General time limitations.
45-1-206. Periods excluded from limitation.

Part 1

Construction and Applicability

45-1-101. Short title. This title shall be known and may be cited as the "Criminal Code of 1973".

History: En. 94-1-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-101.

45-1-102. General purposes and principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law that penal statutes are to be strictly construed has no application to this code. All its provisions are to be construed

according to the fair import of their terms with a view to effect its object and to promote justice.

History: En. 94-1-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-102.

Cross-References

Reasons for punishing offenders, Art. II, sec. 28, Mont. Const.

Criminal act and mental state, 45-2-103.

Sentence and judgment, 46-18-101, 46-18-102.

45-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code apply to any offense defined in this code and committed after January 1, 1974.

(2) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this title and Title 46 govern the construction of and punishment for any offense defined outside of this code and committed after January 1, 1974, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before January 1, 1974. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

History: En. 94-1-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 359, L. 1977; R.C.M. 1947, 94-1-103.

Cross-References

Other limitations as to applicability, 45-1-104.

Classification and limitations, 45-1-201 through 45-1-206.

Definitions and state of mind, 45-2-101 through 45-2-104.

Other factors affecting individual liability, 45-2-201 through 45-2-213.

Liability for acts committed by another, 45-2-301 through 45-2-312.

Justifiable use of force, 45-3-101 through 45-3-115.

45-1-104. Other limitations on applicability. (1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered, and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

History: En. 94-1-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-104.

Cross-References

Sentence, 46-18-201 through 46-18-203.

Part 2

Classification and Limitations

45-1-201. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section, and the sentence that may be imposed upon conviction thereof shall be governed by this title and Title 46.

History: En. 94-1-105 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 8, Ch. 359, L. 1977; R.C.M. 1947, 94-1-105.

Cross-References

Application to offenses committed before and after enactment, 45-1-103.

Time limitations, 45-1-205, 45-1-206.

Definitions of "felony" and "misdemeanor", 45-2-101.

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

Burglary, 45-6-204.

Compounding a felony, 45-7-305.

When no penalty is specified, 46-18-211 through 46-18-213.

45-1-202 through 45-1-204 reserved.

45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, 45-5-625, or 45-5-627 may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time that the offense occurred.

(2) Except as provided in subsection (7)(b) or as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The periods prescribed in subsection (2) are extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination of the minority or incompetency;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) must be extended in a prosecution for unlawful use of a computer, and prosecution must be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not personally a party to the offense or, in the absence of discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters

and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.

(7) (a) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(b) A prosecution for theft under 45-6-301 may be commenced at any time during the 5 years following the date of the theft, whether or not the offender is in possession of or otherwise exerting unauthorized control over the property at the time the prosecution is commenced. After the 5-year period ends, a prosecution may be commenced at any time if the offender is still in possession of or otherwise exerting unauthorized control over the property, except that the prosecution must be commenced within 1 year after the investigating officer discovers that the offender still possesses or is otherwise exerting unauthorized control over the property.

(8) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

History: En. 94-1-106 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 359, L. 1977; R.C.M. 1947, 94-1-106; amd. Sec. 4, Ch. 485, L. 1981; amd. Sec. 1, Ch. 227, L. 1985; amd. Sec. 1, Ch. 294, L. 1989; amd. Sec. 1, Ch. 435, L. 1989; amd. Sec. 1, Ch. 277, L. 1991; amd. Sec. 17, Ch. 220, L. 1993; amd. Sec. 2, Ch. 560, L. 1993; amd. Sec. 1, Ch. 247, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 247 in (2), after "Except as", inserted "provided in subsection (7)(b) or as"; inserted (7)(b) concerning exception to 5-year period if offender is in possession or is exerting unauthorized control and concerning 1-year period following discovery; and made minor changes in style.

Cross-References

Classification of offenses, 45-1-201.

Definitions of "felony" and "misdemeanor", 45-2-101.

Homicide, 45-5-102 through 45-5-104.

Theft and related offenses, Title 45, ch. 6, part 3.

Methods of commencing prosecution, Title 46, ch. 11, part 1.

Filing of information, 46-11-201, 46-11-203.

Guardians of incapacitated persons, 72-5-301 through 72-5-325.

45-1-206. Periods excluded from limitation. The period of limitation does not run during:

(1) any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state;

(2) any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) a prosecution pending against the offender for the same conduct, even if the indictment, complaint, or information which commences the prosecution is dismissed.

History: En. 94-1-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-107.

Cross-References

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General time limitations, 45-1-205.

Definition of "offense", 45-2-101.

Filing of information, 46-11-201, 46-11-203.

CHAPTER 2

GENERAL PRINCIPLES OF LIABILITY

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Part 1
Definitions and State of Mind

45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(23) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is interested.

(27) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(28) "Human being" means a person who has been born and is alive.

(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(30) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(32) An "involuntary act" means any act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(34) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(42) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater

than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(45) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(46) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(48) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(49) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(50) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(51) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(52) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(53) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(55) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision of government.

(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(58) "Premises" includes any type of structure or building and any real property.

(59) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(60) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(61) "Public place" means any place to which the public or any substantial group has access.

(62) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person

participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(63) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(64) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

(b) The term includes serious mental illness or impairment.

(65) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(68) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(69) "Statute" means any act of the legislature of this state.

(70) "Stolen property" means property over which control has been obtained by theft.

(71) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(73) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(74) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $500 by the standards set forth in subsection (74)(a), its value is considered to be an amount less than $500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(75) "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(76) "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(77) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding.

History: En. 94-2-101 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 190, L. 1975; amd. Sec. 1, Ch. 405, L. 1975; amd. Sec. 1, Ch. 443, L. 1975; amd. Sec. 10, Ch. 359, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 94-2-101; amd. Sec. 1, Ch. 10, L. 1979; amd. Sec. 1, Ch. 485, L. 1981; amd. Sec. 15, Ch. 3, L. 1985; amd. Sec. 1, Ch. 143, L. 1993; amd. Sec. 1, Ch. 616, L. 1993; amd. Sec. 50, Ch. 18, L. 1995; amd. Sec. 8, Ch. 354, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 18 in definition of deprive, near beginning of (b) after "property", inserted "of another"; and made minor changes in style.

Chapter 354 inserted definitions of document, Medicaid, Medicaid agency, Medicaid benefit, and Medicaid claim; adjusted subsection references; and made minor changes in style. Amendment effective April 11, 1995.

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Definition of "sexual contact", 45-2-101.

Sexual crimes, Title 45, ch. 5, part 5.

State

Definition of "other state", 45-2-101.

Jurisdiction, Title 46, ch. 2.

Stolen Property

Definition of "obtains or exerts control", 45-2-101.

Robbery, 45-5-401.

Criminal trespass and burglary, 45-6-201 through 45-6-205.

Theft and related offenses, Title 45, ch. 6, part 3.

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Definition of "frisk", 45-2-101.

Stop and frisk, 46-5-401, 46-5-402.

Arrest, Title 46, ch. 6.

Tamper

Criminal mischief and arson, 45-6-101 through 45-6-103.

Criminal trespass, 45-6-201 through 45-6-203.

Threat

Attempt, 45-4-103.

Intimidation, 45-5-203.

Theft, 45-6-301.

Threats and other improper influence in official and political matters, 45-7-102.

Value

Definition of "common scheme", 45-2-101.

Criminal mischief, 45-6-101.

Theft and related offenses, Title 45, ch. 6, part 3.

Vehicle

Definition of "premises", 45-2-101.

Definition of "property", 45-2-101.

Criminal trespass and burglary, 45-6-201 through 45-6-205.

Theft and related offenses, Title 45, ch. 6, part 3.

Weapon

Definition of "bodily injury", 45-2-101.

Definition of "serious bodily injury", 45-2-101.

Assault, 45-5-201 through 45-5-204.

Concealed weapons, 45-8-316 through 45-8-318, 45-8-320 through 45-8-331.

Witness

Definition of "official proceeding", 45-2-101.

Tampering with witnesses and informants, 45-7-206.

Summoning witnesses to testify, 46-15-112, 46-15-113, 46-15-120.

45-2-102. Substitutes for negligence and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

History: En. 94-2-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-110.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

45-2-103. General requirements of criminal act and mental state. (1) Except for deliberate homicide as defined in 45-5-102(1)(b) or an offense that involves absolute liability, a person is not guilty of an offense unless, with respect to each element described by the statute defining the offense, a person acts while having one of the mental states of knowingly, negligently, or purposely.

(2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

(3) The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(4) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements of the offense, the prescribed mental state applies to each element.

(5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as an element.

(6) A person's reasonable belief that the person's conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order that is not known to the person and has not been published or otherwise made reasonably available to the person and if the person could not have acquired the knowledge by the exercise of due diligence pursuant to facts known to the person;

(b) the person acts in reliance upon a statute that later is determined to be invalid;

(c) the person acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) the person acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret the statute.

(7) If a person's reasonable belief is a defense under subsection (6), nevertheless the person may be convicted of an included offense of which the person would be guilty if the law were as the person believed it to be.

(8) A defense based upon this section is an affirmative defense.

History: En. 94-2-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 359, L. 1977; R.C.M. 1947, 94-2-103; amd. Sec. 1, Ch. 580, L. 1979; amd. Sec. 5, Ch. 485, L. 1981; amd. Sec. 2, Ch. 610, L. 1987; amd. Sec. 9, Ch. 354, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 354 in (1), at end, substituted "of knowingly, negligently, or purposely" for "described in subsections (33), (37), and (58) of 45-2-101"; and made minor changes in style. Amendment effective April 11, 1995.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

Absolute liability, 45-2-104.

Inference of mental state in deliberate homicide, 45-5-112.

45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element of the offense, one of the mental states of knowingly, negligently, or purposely only if the offense is punishable by a fine not exceeding $500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

History: En. 94-2-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 359, L. 1977; R.C.M. 1947, 94-2-104; amd. Sec. 6, Ch. 485, L. 1981; amd. Sec. 1, Ch. 350, L. 1987; amd. Sec. 10, Ch. 354, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 354 near middle, after "mental states", substituted "of knowingly, negligently, or purposely" for "described in subsections (33), (37), and (58) of 45-2-101"; and made minor changes in style. Amendment effective April 11, 1995.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.
General requirements of criminal act and mental state, 45-2-103.
Voluntary act, 45-2-202.

Part 2

Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result. (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense and the result is not within the risk of which the offender is aware or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

History: En. 94-2-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-105.

Cross-References

Definition of "conduct", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.

45-2-202. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing, except for deliberate homicide under 45-5-102(1)(b) for which there must be a voluntary act only as to the underlying felony. Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his control.

History: **En. 94-2-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-102; amd. Sec. 3, Ch. 610, L. 1987.**

Cross-References

Definition of "act", 45-2-101.

Definition of "conduct", 45-2-101.

Definition of "involuntary act", 45-2-101.

Definition of "possession", 45-2-101.

Absolute liability, 45-2-104.

45-2-203. Responsibility — intoxicated condition. A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition.

History: **En. 94-2-109 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 53, Ch. 329, L. 1974; R.C.M. 1947, 94-2-109; amd. Sec. 1, Ch. 251, L. 1987.**

Cross-References

Definition of "intoxicating substance", 45-2-101.

Robbery, 45-5-401.

Mental competency of accused, Title 46, ch. 14.

45-2-204 through 45-2-210 reserved.

45-2-211. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

History: **En. 94-2-111 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 13, Ch. 359, L. 1977; R.C.M. 1947, 94-2-111.**

Cross-References

Sexual crimes, Title 45, ch. 5, part 5.

45-2-212. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

History: **En. 94-3-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-110.**

45-2-213. Entrapment. A person is not guilty of an offense if his conduct is incited or induced by a public servant or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

History: En. 94-3-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-111.

Part 3

Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another. A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable for such conduct as provided in 45-2-302, or both.

History: En. 94-2-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-106.

Cross-References

Definition of "conduct", 45-2-101.

When accountability exists, 45-2-302.

Testimony of person legally accountable, 46-16-213.

45-2-302. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed, unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following:

(i) wholly deprives his prior efforts of effectiveness in such commission;

(ii) gives timely warning to the proper law enforcement authorities; or

(iii) otherwise makes proper effort to prevent the commission of the offense.

History: En. 94-2-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-107.

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of another, 45-2-301.

Inchoate offenses, 45-4-101 through 45-4-103.

45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted.

History: En. 94-2-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-108.

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of another, 45-2-301.

When accountability exists, 45-2-302.

45-2-304 through 45-2-310 reserved.

45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor and is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, 82-1-201, or 82-10-104 or by another statute which clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

History: En. 94-2-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-112; amd. Sec. 2, Ch. 582, L. 1983; amd. Sec. 2, Ch. 365, L. 1985.

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of corporation, 45-2-312.

Summons to a corporation, 46-6-212(2).

45-2-312. Accountability for conduct of corporation. (1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense although only a lesser or different punishment is authorized for the corporation.

History: En. 94-2-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-113.

Cross-References

Definition of "conduct", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 3

JUSTIFIABLE USE OF FORCE

Part 1 — When Force Justified

45-3-101. Definitions.
45-3-102. Use of force in defense of person.
45-3-103. Use of force in defense of occupied structure.
45-3-104. Use of force in defense of other property.
45-3-105. Use of force by aggressor.
45-3-106. Use of force to prevent escape.
45-3-107. Use of force by parent, guardian, or teacher.
45-3-108. Use of force in resisting arrest.
45-3-109. Execution of death sentence.
45-3-110 through 45-3-114 reserved.
45-3-115. Affirmative defense.

Part 1

When Force Justified

Part Cross-References

Right to use force, 49-1-103.

45-3-101. Definitions. (1) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

(2) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

History: En. 94-3-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-101.

Cross-References

Definition of "forcible felony", 45-2-101.

Justifiable use of force, Title 45, ch. 3.

45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

History: En. 94-3-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-102.

Cross-References

Definitions of "forcible felony" and of "force likely to cause death or serious bodily harm", 45-3-101.

45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an assault upon or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

History: **En. 94-3-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-103.**

Cross-References

Definition of "conduct", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "enter or remain unlawfully", 45-6-201.

Criminal trespass to property, 45-6-203.

45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

History: **En. 94-3-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-104.**

Cross-References

Definition of "forcible felony", 45-2-101, 45-3-101.

Use of force in defense of person, 45-3-102.

Use of force in defense of occupied structure, 45-3-103.

Definition of "enter or remain unlawfully", 45-6-201.

Criminal trespass to property, 45-6-203.

Arrest by a private person, 46-6-502.

45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

History: **En. 94-3-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-105.**

Cross-References

Definition of "forcible felony", 45-2-101, 45-3-101.

Definition of "force likely to cause death or serious bodily harm", 45-3-101.

45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History: En. 94-3-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-106.

Cross-References

Definition of "correctional institution", 45-2-101.

Resisting arrest, 45-7-301.

Escape, 45-7-306.

Stop and frisk, 46-5-401, 46-5-402.

Method of arrest, 46-6-104.

45-3-107. Use of force by parent, guardian, or teacher. A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice, or pupil.

History: En. 94-3-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-107.

Cross-References

Homicide, 45-5-102 through 45-5-105.

Assault, 45-5-201 through 45-5-204.

45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

History: En. 94-3-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-108.

Cross-References

Use of force in defense of person, 45-3-102.

Resisting arrest, 45-7-301.

Method of arrest, 46-6-104.

Manner of arrest without a warrant, 46-6-312.

45-3-109. Execution of death sentence. A person who puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

History: En. 94-3-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-109; amd. Sec. 3, Ch. 411, L. 1983.

Cross-References

Death penalty, 46-18-301 through 46-18-310.

Execution of death, 46-19-103.

45-3-110 through 45-3-114 reserved.

45-3-115. Affirmative defense. A defense of justifiable use of force based on the provisions of this part is an affirmative defense.

History: En. 94-3-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-112.

Cross-References

Defendant presumed innocent — reasonable doubt, 46-16-204.

CHAPTER 4

INCHOATE OFFENSES

Part 1 — Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation.
45-4-102. Conspiracy.
45-4-103. Attempt.

Part 1

Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

History: En. 94-4-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-101.

Cross-References

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

45-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;
(b) has been convicted of a different offense;
(c) is not amenable to justice;
(d) has been acquitted; or
(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

History: En. 94-4-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-102.

Cross-References

Admissibility of statements of coconspirator, Rule 801(d)(2)(E), M.R.Ev. (see Title 26, ch. 10).

Definition of "acts", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

Liability for acts committed by or for another, 45-2-301 through 45-2-312.

45-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

History: En. 94-4-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-103.

Cross-References

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

CHAPTER 5

OFFENSES AGAINST THE PERSON

Part 1 — Homicide

45-5-101. Repeated.
45-5-102. Deliberate homicide.
45-5-103. Mitigated deliberate homicide.
45-5-104. Negligent homicide.
45-5-105. Aiding or soliciting suicide.
45-5-106 through 45-5-110 reserved.
45-5-111. Extrajudicial confession — evidence of death.
45-5-112. Inference of mental state.

Part 2 — Assault

45-5-201. Assault.
45-5-202. Aggravated assault — felony assault.
45-5-203. Intimidation.
45-5-204. Mistreating prisoners.
45-5-205. Negligent vehicular assault — penalty.
45-5-206. Partner or family member assault — penalty.
45-5-207. Criminal endangerment — penalty.
45-5-208. Negligent endangerment — penalty.
45-5-209 and 45-5-210 reserved.
45-5-211. Assault upon sports official.
45-5-212 through 45-5-219 reserved.
45-5-220. Stalking — exemption — penalty.
45-5-221. Malicious intimidation or harassment relating to civil or human rights — penalty.
45-5-222. Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities.

Part 3 — Kidnapping

45-5-301. Unlawful restraint.
45-5-302. Kidnapping.
45-5-303. Aggravated kidnapping.
45-5-304. Custodial interference.

Part 4 — Robbery

45-5-401. Robbery.

Part 5 — Sexual Crimes

45-5-501. Definition.
45-5-502. Sexual assault.
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Part 1
Homicide

Part Cross-References

Family member of victim — reimbursement for mental health treatment, 53-9-128.

45-5-101. Repealed. Sec. 11, Ch. 610, L. 1987.

History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-101.

45-5-102. *(Temporary)* **Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

(a) he purposely or knowingly causes the death of another human being; or

(b) he attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, he or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222.

45-5-102. *(Effective July 1, 1997)* **Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 338, L. 1977; amd. Sec. 4, Ch. 584, L. 1977; R.C.M. 1947, 94-5-102; amd. Sec. 1, Ch. 322, L. 1979; amd. Sec. 1, Ch. 322, L. 1987; amd. Sec. 4, Ch. 610, L. 1987; amd. Sec. 2, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in (2) in version effective July 1, 1997, near end, inserted reference to 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-102, enacted as sec. 2 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Burden of the state in homicide trial, 45-5-111, 45-5-112.

Kidnapping, 45-5-301 through 45-5-304.

Robbery, 45-5-401.

Sexual intercourse without consent, 45-5-503.

Arson, 45-6-103.

Burglary, 45-6-204.

Escape, 45-7-306.

Limitation on deferred imposition of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Killing of peace officer — aggravating circumstances, 46-18-303.

Protection of premature infants born alive, 50-20-108.

45-5-103. *(Temporary)* **Mitigated deliberate homicide.** (1) A person commits the offense of mitigated deliberate homicide when he purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress for which there was reasonable explanation or excuse, the reasonableness of which shall be determined from the viewpoint of a reasonable person in the actor's situation. This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.

(3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

45-5-103. *(Effective July 1, 1997)* **Mitigated deliberate homicide.** (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.

(3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 5, Ch. 584, L. 1977; R.C.M. 1947, 94-5-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 610, L. 1987; amd. Sec. 3, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (2), at end of first sentence, substituted "as provided in subsection (1)" for "for which there was reasonable explanation or excuse, the reasonableness of which shall be determined from the viewpoint of a reasonable person in the actor's situation"; in (4), near end, inserted reference to 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-103, enacted as sec. 3 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Deliberate homicide, 45-5-102.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Protection of premature infants born alive, 50-20-108.

Ground for suspension or revocation of driver's license, 61-5-405.

45-5-104. Negligent homicide. (1) A person commits the offense of negligent homicide if he negligently causes the death of another human being.

(2) Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-104; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 6, Ch. 610, L. 1987.

Cross-References

Classification of offenses, 45-1-201.

Definition of "negligently", 45-2-101.

Protection of premature infants born alive, 50-20-108.

Ground for suspension or revocation of driver's license, 61-5-405.

45-5-105. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur, commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-106; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

When accountability exists, 45-2-302.

45-5-106 through 45-5-110 reserved.

45-5-111. Extrajudicial confession — evidence of death. In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death and the fact that the death was caused by a criminal agency.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004; MCA 1981, 46-16-203(1); redes. 45-5-111 by Code Commissioner, 1983.

45-5-112. Inference of mental state. In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances of mitigation, excuse, or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004; MCA 1981, 46-16-203(2); redes. 45-5-112 by Code Commissioner, 1983.

Cross-References

Inference of mental state generally, 45-2-103.

Part 2

Assault

45-5-201. Assault. (1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another.

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. 94-5-201 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-201; amd. Sec. 1, Ch. 261, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 188, L. 1991.

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "weapon", 45-2-101.

45-5-202. *(Temporary)* **Aggravated assault — felony assault.** (1) A person commits the offense of aggravated assault if he purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if he purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.

45-5-202. *(Effective July 1, 1997)* **Aggravated assault — felony assault.** (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if the person purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.

History: En. 94-5-202 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 6, Ch. 584, L. 1977; R.C.M. 1947, 94-5-202; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 289, L. 1981; amd. Sec. 1, Ch. 163, L. 1985; amd. Sec. 4, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (3), near end of first sentence, inserted reference to 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-202, enacted as sec. 4 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "serious bodily injury", 45-2-101.

Definition of "weapon", 45-2-101.

Time of making arrest — domestic violence or aggravated assault against family or household member, 46-6-105.

Circumstances of making arrest — domestic abuse or aggravated assault against family or household member, 46-6-210.

Written report when no arrest made in domestic violence situation, 46-6-601.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-602.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

45-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; or

(c) commit any felony.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-203; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 268, L. 1985.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purposely", 45-2-101.

45-5-204. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner;

(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: **En. 94-8-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-113; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "threat", 45-2-101.
Criminal responsibility of corporations, 45-2-311.

45-5-205. Negligent vehicular assault — penalty. (1) If a person operates a motor vehicle in a negligent manner and he is driving while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and his conduct is the cause of bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

History: **En. Sec. 1, Ch. 93, L. 1985; amd. Sec. 1, Ch. 196, L. 1987; amd. Sec. 14, Ch. 789, L. 1991.**

45-5-206. Partner or family member assault — penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) An offender convicted of partner or family member assault shall be fined an amount not less than $100 or more than $1,000 and be imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or family member assault, the offender shall be fined not less than $500 and not more than $50,000 and be imprisoned for a term not less than 30 days and not more than

5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(b) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.

(4) (a) An offender convicted of partner or family member assault shall be required to pay for and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The counselor must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

(i) with a person licensed under Title 37, chapter 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

(6) In addition to the requirements of subsection (5), if financially able, the offender shall be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence.

History: En. Sec. 1, Ch. 700, L. 1985; amd. Sec. 1, Ch. 480, L. 1989; amd. Sec. 257, Ch. 800, L. 1991; amd. Sec. 2, Ch. 425, L. 1993; amd. Sec. 51, Ch. 18, L. 1995; amd. Sec. 10, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 18 in (3), near middle of second sentence after "imprisoned", deleted "in the county jail or in the state prison" and at end, after "5 years", deleted "or both" and inserted third and fourth sentences clarifying place of imprisonment if the term of imprisonment is less or more than 1 year; in second sentence of (4)(c), after "additional counseling or", inserted "additional"; and made minor changes in style. The amendment in (4)(c) was rendered void by Ch. 350.

Chapter 350 throughout section substituted "partner or family member assault" for "domestic abuse"; in (1)(b), at end, deleted "during or in connection with a quarrel, fight, or abusive behavior"; in (1)(c) deleted second sentence that read: "The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or partner, whether or not the offender believes the firearm to be loaded"; in (2), in introductory clause, inserted reference to Title 40, chapter 15; in (2)(a), in second sentence, inserted "in-laws"; in (2)(b), after "former spouses", inserted "persons who have a child in common"; in (3)(a) substituted first sentence establishing a penalty for first offense for former penalty language that read: "A person convicted of domestic abuse for the first or second time shall be fined not to exceed $1,000 or be imprisoned in the county jail not to exceed 1 year, or both", inserted second and third sentences regarding second offense penalties and applicable probation, and in fourth sentence increased minimum imprisonment from 10 days to 30 days; inserted (3)(b) defining conviction; in (4)(a) substituted current language outlining counseling assessment and other counseling requirements for former language that read: "A person convicted of domestic abuse shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours"; in (4)(a)(i) deleted reference to Title 37, chapter 3; in (4)(b) inserted second sentence regarding issues requiring additional counseling; deleted (4)(c) that read: "(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and shall provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or treatment, such as chemical dependency treatment, or both"; substituted (5) and (6) regarding payment of associated costs for former (5) that read: "(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court"; inserted (7) regarding the use of firearms; inserted (8) requiring the court to provide the offender with a written copy of the sentence; and made minor changes in style.

Cross-References

Time of making arrest — domestic violence or aggravated assault against family or household member, 46-6-105.

Circumstances of making arrest — domestic abuse or aggravated assault against family or household member, 46-6-210.

Written report when no arrest made in domestic violence situation, 46-6-601.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-602.

45-5-207. Criminal endangerment — penalty. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 2, Ch. 196, L. 1987; amd. Sec. 1, Ch. 299, L. 1989.

45-5-208. Negligent endangerment — penalty. (1) A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

(2) A person convicted of the offense of negligent endangerment shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 3, Ch. 196, L. 1987.

45-5-209 and 45-5-210 reserved.

45-5-211. Assault upon sports official. (1) A person commits the offense of assault upon a sports official if, while a sports official is acting as an official at an athletic contest in any sport at any level of amateur or professional competition, the person:

(a) purposely or knowingly causes bodily injury to the sports official;

(b) negligently causes bodily injury to the sports official with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with the sports official; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in the sports official.

(2) A person convicted of assault upon a sports official shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. Sec. 1, Ch. 408, L. 1993.

45-5-212 through 45-5-219 reserved.

45-5-220. Stalking — exemption — penalty. (1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or by other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed $1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed $10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in Title 40, chapter 15, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

History: En. Sec. 1, Ch. 292, L. 1993; amd. Sec. 11, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 in (4) substituted reference to Title 40, chapter 15, for reference to 40-4-121.

45-5-221. Malicious intimidation or harassment relating to civil or human rights — penalty. (1) A person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, he purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

(a) causes bodily injury to another;

(b) causes reasonable apprehension of bodily injury in another; or

(c) damages, destroys, or defaces any property of another or any public property.

(2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without his or her permission.

(3) A person convicted of the offense of malicious intimidation or harassment shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $5,000, or both.

History: En. Secs. 1, 2, Ch. 570, L. 1989.

45-5-222. Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities. (1) A person who has been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) shall run consecutively to the sentence, except as provided in 46-18-222.

History: En. Sec. 3, Ch. 570, L. 1989.

Part 3

Kidnapping

45-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-301.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

45-5-302. *(Temporary)* **Kidnapping.** (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000, except as provided in 46-18-222.

45-5-302. *(Effective July 1, 1997)* **Kidnapping.** (1) A person commits the offense of kidnapping if the person knowingly or purposely and without lawful authority restrains another person by either secreting or holding the other person in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

History: En. 94-5-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 584, L. 1977; R.C.M. 1947, 94-5-302; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (2), near end, inserted reference to 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-302, enacted as sec. 5 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Limitation upon deferral or suspension of sentence, 46-18-201.

45-5-303. *(Temporary)* **Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-222, a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, unless he has voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000.

45-5-303. *(Effective July 1, 1997)* **Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping if the person knowingly or purposely and without lawful authority restrains another person by either secreting or holding the other person in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-219 and 46-18-222, a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, unless the person has voluntarily released the victim alive, in a safe place, and with no serious bodily injury, in which event the person shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000.

History: En. 94-5-303 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 338, L. 1977; amd. Sec. 8, Ch. 584, L. 1977; R.C.M. 1947, 94-5-303; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 6, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (2), near beginning, inserted reference to 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-303, enacted as sec. 6 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Unlawful restraint, 45-5-301.

Kidnapping, 45-5-302.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that the person has no legal right to do so, the person:

(a) takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, takes, entices, or withholds any child from the other parent when the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) is one of two persons who has joint custody of a child under a court order and takes, entices, or withholds the child from the other when the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) With respect to the first alleged commission of the offense only, a person who has not left the state does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody prior to arraignment. With respect to the first alleged commission of the offense only, a person who has left the state does not commit an offense under this section if the person voluntarily returns the child, incompetent person, or other person to lawful custody prior to arrest.

History: En. 94-5-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-305; amd. Sec. 1, Ch. 274, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 518, L. 1987; amd. Sec. 4, Ch. 467, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 467 in (3), at beginning of first and second sentences, inserted "With respect to the first alleged commission of the offense only"; and made minor changes in style. Amendment effective April 15, 1995.

Cross-References

Child custody determination and modification, 40-4-211 through 40-4-225.

Definition of "knowingly", 45-2-101.

Kidnapping, 45-5-302.

Aggravated kidnapping, 45-5-303.

Part 4
Robbery

45-5-401. *(Temporary)* **Robbery.** (1) A person commits the offense of robbery if in the course of committing a theft he:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission.

45-5-401. *(Effective July 1, 1997)* **Robbery.** (1) A person commits the offense of robbery if in the course of committing a theft, the person:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) "In the course of committing a theft", as used in this section, includes acts that occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission.

History: **En. 94-5-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 584, L. 1977; R.C.M. 1947, 94-5-401; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 7, Ch. 482, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (2), near end, inserted reference to 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-401, enacted as sec. 7 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "felony", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "threat", 45-2-101.
Theft, 45-6-301.
Limitation on deferral or suspension of sentence, 46-18-201.

Part 5
Sexual Crimes

Part Cross-References

Presentence investigation, 46-18-111.
Family member of minor victim — reimbursement for mental health treatment, 53-9-128.

45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against himself or another; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated;

(ii) physically helpless; or

(iii) less than 16 years old.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

History: **En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501; amd. Sec. 3, Ch. 175, L. 1991; amd. Sec. 1, Ch. 218, L. 1991; amd. Secs. 1, 8, Ch. 687, L. 1991.**

Cross-References

Definition of "mentally defective", 45-2-101.
Definition of "mentally incapacitated", 45-2-101.
Definition of "physically helpless", 45-2-101.
Definition of "sexual contact", 45-2-101.
Definition of "sexual intercourse", 45-2-101.
Consent as a defense, 45-2-211.
Sexual intercourse without consent, 45-5-503.
Deviate sexual conduct, 45-5-505.
Sexual abuse of children, 45-5-625.

45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 172, L. 1985; amd. Sec. 1, Ch. 564, L. 1991; amd. Sec. 2, Ch. 687, L. 1991; amd. Sec. 1, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (3), near middle after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and near end, after "more than", substituted "100" for "20"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "sexual contact", 45-2-101.

Sexual abuse of children, 45-5-625.

45-5-503. *(Temporary)* **Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result

from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

45-5-503. *(Effective July 1, 1997)* **Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985; amd. Sec. 1, Ch. 175, L. 1991; amd. Sec. 2, Ch. 218, L. 1991; amd. Sec. 3, Ch. 687, L. 1991; amd. Sec. 1, Ch. 85, L. 1993; amd. Sec. 8, Ch. 482, L. 1995; amd. Sec. 2, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 482 in version effective July 1, 1997, in (2), near end, in (3)(a), near end, and in (3)(b), near end, inserted reference to 46-18-219.

Chapter 550 in (2), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "more than" substituted "100" for "20"; in (3)(a), near middle after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned", after "less than" substituted "4" for "2", and after "more than" substituted "100" for "40" and deleted second sentence that read: "An act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission"; in (3)(b), near middle, substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "more than" substituted "100" for "40"; inserted (5) defining in the course of committing sexual intercourse without consent; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-503, enacted as sec. 8 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual abuse of children, 45-5-625.

Limitation on deferral or suspension of sentence, 46-18-201.

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person, exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, the person shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, the person shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $10,000.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504; amd. Sec. 1, Ch. 176, L. 1991; amd. Sec. 4, Ch. 687, L. 1991; amd. Sec. 3, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (2)(c), after "shall be", substituted "punished by life mprisonment or by imprisonment" for "fined an amount not to exceed $10,000 or be imprisoned" and after "term of not" substituted "less han 5 years or more than 100 years and may e fined not more than $10,000" for "more than 5 years, or both"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Obscenity, 45-8-201.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages n deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be mprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-505; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 175, L. 1991; amd. Sec. 7, Ch. 687, L. 1991.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "deviate sexual relations", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Definition of "without consent", 45-5-501, 45-5-511.

Sexual abuse of children, 45-5-625.

45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.

45-5-507. Incest. (1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed $50,000.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000.

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-606; amd. Sec. 7, Ch. 198, L. 1981; MCA 1981, 45-5-613; redes. 45-5-507 by Code Commissioner, 1983; amd. Sec. 1, Ch. 438, L. 1983; amd. Sec. 2, Ch. 644, L. 1985; amd. Sec. 1, Ch. 174, L. 1989; amd. Sec. 5, Ch. 687, L. 1991; amd. Sec. 4, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 550 in (3), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned", after "exceed" substituted "100" for "20", and at end deleted "or both"; in (4), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "imprisoned" and after "prison for" substituted "a term of not less than 4 years or more than 100" for "any term not to exceed 20"; and made minor changes in style.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "cohabit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-508 through 45-5-510 reserved.

45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979; MCA 1981, 45-5-506; redes. 45-5-511 by Code Commissioner, 1983; amd. Sec. 3, Ch. 172, L. 1985; amd. Sec. 1, Ch. 425, L. 1987; amd. Sec. 6, Ch. 687, L. 1991.

Cross-References

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Indecent exposure, 45-5-504.

Sexual abuse of children, 45-5-625.

Part 6
Offenses Against the Family

45-5-601. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975; R.C.M. 1947, 94-5-602.

Cross-References

Definition of "public place", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits a person to patronize a prostitute;

(e) procures a prostitute for a patron;

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) A person convicted of promoting prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part).

Cross-References

Definition of "house of prostitution", 45-2-101.
Definition of "inmate", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "solicit", 45-2-101.
Prostitution, 45-5-601.
Evidence in cases of promotion, 45-5-604.

45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not he is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support he is responsible.

(2) A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part); amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Prostitution, 45-5-601.
Promoting prostitution, 45-5-602.
Evidence in cases of promotion, 45-5-604.

45-5-604. Evidence in cases of promotion. (1) On the issue whether a place is a house of prostitution, the following, in addition to all other admissible evidence, shall be admissible:

(a) its general repute;

(b) the repute of the persons who reside in or frequent the place; or

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against his spouse shall be admissible under 45-5-602, 45-5-603, and this section.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(4).

Cross-References

Definition of "house of prostitution", 45-2-101.

Prostitution, 45-5-601.

Promoting prostitution, 45-5-602.

Aggravated promotion of prostitution, 45-5-603.

45-5-605 through 45-5-610 reserved.

45-5-611. Bigamy. (1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead;

(b) the offender and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the offender to be alive;

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-604 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-604.

Cross-References

Definition of "knowingly", 45-2-101.

45-5-612. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed $500 or be imprisoned in the county jail for any period not to exceed 6 months, or both.

History: En. 94-5-605 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-605.

Cross-References

Definition of "knowingly", 45-2-101.

Bigamy, 45-5-611.

45-5-613. Renumbered 45-5-507 by Code Commissioner, 1983.

45-5-614 through 45-5-619 reserved.

45-5-620. Definitions. As used in 45-5-625, the following definitions apply:

(1) "Sexual conduct" means actual or simulated:

(a) sexual intercourse, whether between persons of the same or opposite sex;

(b) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(c) bestiality;

(d) masturbation;

(e) sadomasochistic abuse;

(f) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(g) defecation or urination for the purpose of the sexual stimulation of the viewer.

(2) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(3) "Visual medium" means:

(a) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(b) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

History: **En. Sec. 2, Ch. 638, L. 1993; amd. Sec. 1, Ch. 187, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 187 inserted (3)(b) including disk, diskette, or other physical media in definition of visual medium; and made minor changes in style.

45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if the person fails to provide support that the person can provide and that the person knows the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if:

(i) the offender has left the state without making reasonable provisions for the support of a spouse, child, or other dependent; or

(ii) the offender has been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) must be forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the defendant to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the defendant.

(12) When any payment of public assistance money has been made for the benefit of a child by the department of public health and human services under the provisions of Title 53, a representative of the department may sign a

criminal complaint against the person obligated by law to support the child who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

History: En. 94-5-608 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 19, Ch. 359, L. 1977; R.C.M. 1947, 94-5-608; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 429, L. 1993; amd. Sec. 199, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (12) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Cross-References

Mutual obligations of husband and wife, 40-2-101.

Duties of husband and wife as to support, 40-2-102.

Support of spouse, 40-2-103.

Liability of married person when abandoned by spouse, 40-2-104.

Child support, 40-4-204.

Enforcement of support, Title 40, ch. 5.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Definition of "knowingly", 45-2-101.

45-5-622. Endangering the welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian; or

(ii) engage in sexual conduct.

(3) A person convicted of endangering the welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed $1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

History: **En. 94-5-607 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 85, L. 1975; amd. Sec. 1, Ch. 218, L. 1977; amd. Sec. 18, Ch. 359, L. 1977; R.C.M. 1947, 94-5-607; amd. Sec. 1, Ch. 405, L. 1987; amd. Sec. 3, Ch. 448, L. 1989.**

Cross-References

Liability of one furnishing alcoholic beverage for injuries arising from an event involving the consumer, 27-1-710.

Definition of "knowingly", 45-2-101.

45-5-623. Unlawful transactions with children. (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-5-609 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-609; amd. Sec. 2, Ref. 74, app. Nov. 7, 1978; amd. Sec. 4, Ch. 217, L. 1987; amd. Sec. 4, Ch. 448, L. 1989.**

Compiler's Comments

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Presumption of legal age to purchase alcoholic beverage — defense for seller, 16-3-301.

Liability of one furnishing alcoholic beverage for injuries arising from an event involving the consumer, 27-1-710.

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

45-5-624. Unlawful attempt to purchase or possession of an intoxicating substance — interference with sentence or court order. (1) A person under the age of 21 years commits the offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of arrest to violate this subsection. A person does not commit the offense if the person consumes or gains possession of the beverage because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is necessary to possess alcoholic beverages.

(2) In addition to any disposition by the youth court under 41-5-523, a person under 18 years of age who is convicted of the offense of possession of an intoxicating substance shall:

(a) for the first offense, be fined an amount not to exceed $100 and:

(i) have the person's driver's license confiscated by the court for not less than 30 days and not more than 90 days and be ordered not to drive during that period if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) be ordered to perform community service if a community service program is available; and

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(b) for a second offense, be fined an amount not to exceed $200 and:

(i) have the person's driver's license suspended for not less than 60 days and not more than 120 days;

(ii) be ordered to perform community service if a community service program is available; and

(iii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available;

(c) for a third or subsequent offense, be fined an amount not less than $300 or more than $500 and:

(i) have the person's driver's license suspended for not less than 120 days and not more than 1 year, except that if the person was driving or was otherwise in actual physical control of a motor vehicle when the offense occurred, have the person's driver's license revoked for 1 year or until the person reaches the age of 18, whichever occurs last;

(ii) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, if any is available, all costs of participation in a community-based substance abuse information course, if one is available, which may include alcohol or drug treatment, or both, approved by the department of corrections, if determined by the court to be appropriate.

(3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating substance shall:

(a) for a first offense, be fined an amount not to exceed $50 and be ordered to perform community service if a community service program is available;

(b) for a second offense, be fined an amount not to exceed $100 and:

(i) be ordered to perform community service if a community service program is available; and

(ii) have the person's driver's license suspended for not more than 60 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(c) for a third or subsequent offense, be fined an amount not to exceed $200 and:

(i) be ordered to perform community service if a community service program is available;

(ii) have the person's driver's license suspended for not more than 120 days if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to complete an alcohol information course at an alcohol treatment program approved by the department of corrections, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both; and

(iv) in the discretion of the court be imprisoned in the county jail for a term not to exceed 6 months.

(4) A person under the age of 21 commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $50 if the person was 18 years of age or older at the time the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed.

(5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(6) A person commits the offense of interference with a sentence or court order if the person purposely or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

(7) A conviction or youth court adjudication under this section must be reported by the court to the department of justice under 61-11-101 for the purpose of keeping a record of the number of offenses committed but may not be considered part of the person's driving record for insurance purposes unless a second or subsequent conviction or adjudication under this section occurs.

History: En. 94-5-610 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 87, L. 1974; amd. Sec. 1, Ch. 536, L. 1977; R.C.M. 1947, 94-5-610; amd. Sec. 3, Ref. 74, app. Nov. 7, 1978; amd. Sec. 1, Ch. 105, L. 1985; amd. Sec. 5, Ch. 217, L. 1987; amd. Sec. 65, Ch. 609, L. 1987; amd. Sec. 1, Ch. 412, L. 1989; amd. Sec. 5, Ch. 448, L. 1989; amd. Sec. 1, Ch. 477, L. 1989; amd. Sec. 1, Ch. 502, L. 1991; amd. Sec. 1, Ch. 233, L. 1993; amd. Sec. 6, Ch. 481, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 481 in (1), near beginning of first sentence after "age of", substituted "21" for "19" and in third sentence, at beginning after "A person", deleted "under the age of 21 commits the offense of possession of an intoxicating substance if the person knowingly has in the person's possession an alcoholic beverage, except as provided in 16-6-305 and except that a person"; in (2), at beginning, inserted "In addition to any disposition by the youth court under 41-5-523" and after "person" inserted "under 18 years of age who is"; in (2)(a) substituted present $100 fine for first offense for former language that read: "is less than 18 years of age, be fined not to exceed $50"; in (2)(a)(i), after "court for", inserted "not less than 30 days and"; in (2)(a)(ii), at end, inserted "if a community service program is available"; deleted former (2)(a)(iii) that read: "(iii) have the person's driver's license suspended if convicted of a second or subsequent offense under this section"; deleted (2)(a)(iv) that read: "(iv) be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through (2)(a)(iii)"; deleted former

(2)(b) that read: "(b) is 18 years of age or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense or be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and"; in (2)(a)(iii), after "service", inserted "if any is available" and after "course" inserted "if one is available"; inserted (2)(b) regarding the fine for second offense; in (2)(b)(i), after "license", substituted "suspended for not less than 60 days and not more than 120 days" for "confiscated by the court for not more than 90 days and be ordered not to drive during that period if the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred"; in (2)(b)(ii), at end, inserted "if a community service program is available"; deleted (2)(b)(iv) that read: "(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through (2)(b)(iii)"; inserted (2)(b)(iii) requiring payment of costs of participation in a substance abuse information course; inserted (2)(c) regarding fine and penalties for a third possession offense; inserted (3) establishing fine and penalties for possession by a person 18 years of age or older; in (4), in second sentence after "$50", inserted "if the person was 18 years of age or older at the time the offense was committed or $100 if the person was under 18 years of age at the time that the offense was committed"; in (5) deleted former second sentence that read: "If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply" and in second sentence, after "proceedings for", deleted "violation of subsection (1) or for"; inserted (7) regarding reporting of a conviction or Youth Court adjudication"; and made minor changes in style.

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Unlawful purchase of alcoholic beverage, 16-3-301.

Penalty for violation of liquor code by underage person, 16-6-314.

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

45-5-625. *(Temporary)* **Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) A person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections.

45-5-625. *(Effective July 1, 1997)* **Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly persuades, entices, counsels, or procures a child to engage in sexual conduct, actual or simulated, for use as designated in subsection (1)(a), (1)(b), or (1)(d);

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium in which children are engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or

(g) possesses with intent to sell any visual or print medium in which children are engaged in sexual conduct, actual or simulated.

(2) (a) A person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than $10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections.

History: En. Sec. 1, Ch. 505, L. 1979; amd. Sec. 1, Ch. 638, L. 1993; amd. Sec. 2, Ch. 187, L. 1995; amd. Sec. 9, Ch. 482, L. 1995; amd. Sec. 200, Ch. 546, L. 1995; amd. Sec. 5, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 187 in (1), at end, deleted "knowingly"; in (1)(a), (1)(b), (1)(c), (1)(d), and (1)(e) inserted "knowingly"; in (1)(d), after "sells", deleted "possesses with intent to sell"; in (1)(f) inserted reference to subsection (1)(g); inserted (1)(g) expanding sexual abuse of children offense to a person who possesses with intent to sell any visual or print medium in which children are engaged in actual or simulated sexual conduct; in (2)(c) increased fine from $500 to $10,000, substituted "state prison" for "county jail", and increased term of incarceration to 10 years from 6 months; adjusted subsection references; and made minor changes in style.

Chapter 482 in version effective July 1, 1997, in (2)(a), (2)(b), and (2)(c), near beginning, inserted reference to exception in 46-18-219; and made minor changes in style. The amendment in (2)(a) was rendered void by Ch. 550.

Chapter 546 in (3) substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 550 in (1)(d), after "sells", deleted "possesses with intent to sell"; in (1)(e), after "possesses", substituted "any visual or print medium in which children are engaged in sexual conduct, actual or simulated" for "material referred to in subsection (1)(d)"; in (1)(f) inserted reference to subsection (1)(g); inserted (1)(g) regarding possession with intent to sell; in (2)(a), at beginning, deleted "Except as provided in subsections (2)(b) and (2)(c)", after "shall be" substituted "punished by life imprisonment or by imprisonment" for "fined not to exceed $10,000 or be imprisoned", after "exceed" substituted "100" for "20", and at end substituted "and may be fined not more than $10,000" for "or both"; in (2)(b), after "shall be", substituted "punished by life imprisonment or by imprisonment" for "fined not to exceed $10,000 or be imprisoned" and after "prison for" substituted "a term of not less than 4 years or more than 100 years and may be fined not more than $10,000" for "any term not to exceed 50 years, or both"; in (3) expanded subsection reference to include subsection (1)(g); and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-625, enacted as sec. 9 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Sexual crimes, Title 45, ch. 5, part 5.

Family member of minor victim — reimbursement for mental health treatment, 53-9-128.

45-5-626. Violation of order of protection. (1) A person commits the offense of violation of an order of protection if the person, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection under Title 40, chapter 15. It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.

(2) Only the respondent under an order of protection may be cited for a violation of the order. The petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

(3) An offender convicted of violation of an order of protection shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. Upon conviction for a second offense, an offender shall be fined not less than $200 and not more than $500 and be imprisoned in the county jail not less than 24 hours and not more than 6 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less than $500 and not more than $2,000 and be imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years.

History: En. Sec. 9, Ch. 526, L. 1985; amd. Sec. 12, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 in (1), at end of first sentence, inserted "or an order of protection under Title 40, chapter 15" and inserted second and third sentences regarding an inference of defendant's knowledge of an order of protection; inserted (2) regarding citations for violations of an order of protection; in (3), at end of first sentence, inserted "for a first offense" and inserted second and third sentences regarding penalties for second or subsequent offenses; and made minor changes in style.

45-5-627. *(Temporary)* **Ritual abuse of minor — exceptions — penalty.** (1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) A person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

45-5-627. *(Effective July 1, 1997)* **Ritual abuse of minor — exceptions — penalty.** (1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) Except as provided in 46-18-219, a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. Sec. 1, Ch. 560, L. 1993; amd. Sec. 10, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (3), at beginning, inserted "Except as provided in 46-18-219".

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 45-5-627, enacted as sec. 10 of Senate Bill No. 66, are effective July 1, 1997.

45-5-628 through 45-5-630 reserved.

45-5-631. Visitation interference. (1) A person who has legal custody of a minor child commits the offense of visitation interference if he knowingly or purposely prevents, obstructs, or frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) A person convicted of the offense of visitation interference shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 5 days, or both.

History: En. Sec. 1, Ch. 493, L. 1987.

45-5-632. Aggravated visitation interference. (1) A person who commits the offense of visitation interference by changing the residence of the minor child over whom he has legal custody to another state without giving written notice as required in 40-4-217 or without written consent of the person entitled to visitation pursuant to an existing court order commits the offense of aggravated visitation interference.

(2) A person convicted of the offense of aggravated visitation interference shall be fined an amount not to exceed $1,000 or be imprisoned in the state prison for a term not to exceed 18 months, or both.

History: En. Sec. 2, Ch. 493, L. 1987.

45-5-633. Defenses to visitation interference and aggravated visitation interference. (1) A person does not commit the offense of visitation interference or aggravated visitation interference if he acts:

(a) with the consent of the person entitled to visitation;

(b) under an existing court order; or

(c) with reasonable cause.

(2) Return of the child prior to arrest is a defense only with respect to the first commission of visitation interference or aggravated visitation interference.

History: En. Sec. 3, Ch. 493, L. 1987.

45-5-634 through 45-5-636 reserved.

45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited — penalties. (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product.

(2) A person convicted of possession or consumption of a tobacco product:

(a) shall be fined $35 for a first offense, no less than $75 or more than $100 for a second offense, and no less than $100 or more than $250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of supervision under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product may also be required to perform community service or to attend a tobacco cessation program.

(4) The fines collected under subsection (2) must be deposited to the credit of the general fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made.

History: En. Sec. 1, Ch. 376, L. 1995.

CHAPTER 6

OFFENSES AGAINST PROPERTY

Part 1 — Criminal Mischief and Arson

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45-6-310. Definition — computer use.
45-6-311. Unlawful use of a computer.
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45-6-314. Theft by disposal of stolen property.
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45-6-316. Issuing a bad check.
45-6-317. Deceptive practices.
45-6-318. Deceptive business practices.
45-6-319. Chain distributor schemes.
45-6-320 through 45-6-324 reserved.
45-6-325. Forgery.

45-6-326. Obscuring the identity of a machine.
45-6-327. Illegal branding or altering or obscuring a brand.

Part 1
Criminal Mischief and Arson

45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if the person knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of $500, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss.

History: En. 94-6-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 88, L. 1975; R.C.M. 1947, 94-6-102; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 560, L. 1981; amd. Sec. 1, Ch. 581, L. 1983; amd. Sec. 1, Ch. 98, L. 1989; amd. Sec. 2, Ch. 616, L. 1993.

Cross-References

Injury to election equipment, materials, and records, 13-35-206.

Injury to property associated with funeral or interment, 35-21-704.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "property of another", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "tamper", 45-2-101.

Definition of "value", 45-2-101.

Injury to water distribution system in irrigation district, 85-7-1924.

Duty of state conservation officers to enforce — where, 87-1-504.

Disturbance or theft of traps or trapped animals, 87-3-507.

45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 590, L. 1985.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "property of another", 45-2-101.

Definition of "purposely", 45-2-101.

Penalty for setting or leaving fire causing damage, 50-63-102.

Failure to extinguish campfire, 76-13-123.

45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, the person knowingly or purposely:

(a) damages or destroys a structure, vehicle, personal property (other than a vehicle) that exceeds $500 in value, crop, pasture, forest, or other real property that is property of another without consent;

(b) damages or destroys a structure, vehicle, crop, pasture, forest, or other property that the person owns or has a possessory interest in, with the purpose of obtaining a pecuniary or other gain through fraud or deception; or

(c) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for a term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 261, L. 1975; R.C.M. 1947, 94-6-104; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 590, L. 1985; amd. Sec. 1, Ch. 124, L. 1995.

Compiler's Comments

1995 Amendment — Code Commissioner Clarification: Chapter 124 in (1)(a) substituted "a structure" for "an occupied structure" and inserted "vehicle, personal property (other than a vehicle) that exceeds $500 in value, crop, pasture, forest, or other real property"; inserted (1)(b) referring to the damage or destruction of one's own property; and made minor changes in style.

Chapter 482 in (2), at beginning, inserted "Except as provided in 46-18-219"; and made minor changes in style. Section 20, Ch. 482, L. 1995, provided: "If House Bill No. 46 is passed and approved, then the crime of arson, 45-6-103, is deleted from the crimes listed in [subsection (1)(b) of section 1 of this act]." House Bill No. 46 was approved March 13, 1995, as Ch. 124, L. 1995. Therefore, the reference to the crime of arson has been deleted from 46-18-219(1)(b) and this section should have been voided. The inserted reference to 46-18-219 is erroneous, so pursuant to the authority in sec. 73, Ch. 18, L. 1995, the amendment has been deleted.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Definition of "without consent", 45-5-501.

Release of arsonist — notification of Department of Justice, 53-1-104.

45-6-104. Desecration of capitol. (1) In this section, "capitol" means the Montana state capitol building and any permanent monuments on the capitol grounds.

(2) A person commits the offense of desecration of the capitol if the person purposely or knowingly:

(a) defiles or defaces the capitol;

(b) places on or attaches to the capitol any mark, design, or material not properly a part of the capitol; or

(c) injures, damages, or destroys any portion of the capitol.

(3) A person convicted of the offense of desecration of the capitol shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $100,000, or both.

(4) This section does not apply to displays or actions authorized by the department of administration.

History: En. Sec. 1, Ch. 533, L. 1995.

Compiler's Comments

1995 Amendment: Section 3, Ch. 533, L. 1995, provided: "[This act] is effective on passage and approval." Approved April 25, 1995.

Part 2

Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully". (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To provide for effective posting of private land through which the public has no right-of-way, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land through which or along which the public has an unfenced right-of-way by means of a public road, a landowner shall:

(a) place a conspicuous sign no closer than 30 feet of the centerline of the roadway where it enters the private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT ___ MILES"; or

(b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the roadway at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land, except that orange markings may not be placed on posts where the public roadway enters the private land.

(4) If property has been posted in substantial compliance with subsection (2) or (3), it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent.

(5) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning the licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of the provisions of this section. In the interests of providing the public with clear information regarding the public nature of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the requirements of subsection (3).

(6) For purposes of this section, "land" means land as defined in 70-15-102.

(7) In no event may civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

History: En. 94-6-201 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 21, Ch. 359, L. 1977; R.C.M. 1947, 94-6-201; amd. Sec. 1, Ch. 599, L. 1985; amd. Sec. 1, Ch. 268, L. 1991.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "premises", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.

45-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-202.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal mischief, 45-6-101.
Theft, 45-6-301.
Unauthorized use of motor vehicles, 45-6-308.

45-6-203. Criminal trespass to property. (1) Except as provided in 70-16-111, a person commits the offense of criminal trespass to property if the person knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-203; amd. Sec. 1, Ch. 604, L. 1993.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "premises", 45-2-101.

Definition of "enter or remain unlawfully", 45-6-201.

State conservation officers to enforce — where, 87-1-504.

45-6-204. Burglary. (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein and:

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-204 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 260, L. 1975; R.C.M. 1947, 94-6-204; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 357, L. 1987.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "weapon", 45-2-101.

Definition of "enter or remain unlawfully", 45-6-201.

45-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or explosive suitable for breaking into an occupied structure or vehicle or any depository designed for the safekeeping of property or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-205.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "possession", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "vehicle", 45-2-101.

Part 3
Theft and Related Offenses

45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202.

(7) (a) A person convicted of the offense of theft of property not exceeding $500 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding $500 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(8) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

History: En. 94-6-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 22, Ch. 359, L. 1977; R.C.M. 1947, 94-6-302; amd. Sec. 1, Ch. 374, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 581, L. 1983; amd. Sec. 21, Ch. 670, L. 1985; amd. Sec. 65, Ch. 464, L. 1987; amd. Sec. 2, Ch. 739, L. 1991; amd. Sec. 1, Ch. 190, L. 1993; amd. Sec. 3, Ch. 616, L. 1993; amd. Sec. 2, Ch. 618, L. 1993; amd. Sec. 9, Ch. 237, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 237 inserted (6) relating to insurance fraud; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Photographs of items allegedly taken or converted — admissibility procedure, 26-1-608.

Civil penalty for shoplifting, 27-1-718.

Fraudulent obtaining of unemployment benefits, 39-51-3203.

Definition of "deception", 45-2-101.

Definition of "deprive", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "obtains or exerts control", 45-2-101.

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "stolen property", 45-2-101.

Definition of "threat", 45-2-101.

Definition of "value", 45-2-101.

Theft by disposal of stolen property, 45-6-314.

Fraudulent obtaining of public assistance, 53-2-107.

Unlawful transportation of trees, 76-13-601.

Disturbance or theft of traps or trapped animals, 87-3-507.

45-6-302. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed $500 or be imprisoned in the county jail for a period not to exceed 6 months.

History: En. 94-6-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-303.

Cross-References

Definition of "knowledge", 45-2-101.

Definition of "obtains or exerts control", 45-2-101.

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

45-6-303. Offender's interest in the property. (1) It is no defense to a charge of theft of property that the offender has an interest therein when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses is theft only if it occurs after the parties have ceased living together.

History: En. 94-6-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-306.

Cross-References

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Theft, 45-6-301.

45-6-304. Repealed. Sec. 2, Ch. 188, L. 1991.

History: En. 94-6-314 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-314.

45-6-305. Theft of labor or services or use of property. (1) A person commits the offense of theft when he obtains the temporary use of property, labor, or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-304.

Cross-References

Definition of "deception", 45-2-101.

Definition of "obtain", 45-2-101.

Definition of "property", 45-2-101.

Definition of "threat", 45-2-101.

Theft, 45-6-301.

45-6-306. Obtaining communication services with intent to defraud. In a prosecution under 45-6-305 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

(1) by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(2) by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, or electronically;

(3) by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(4) by making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence, place of origin, or destination of any telecommunications.

History: En. 94-6-304.1 by Sec. 1, Ch. 156, L. 1974; amd. Sec. 1, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.1.

Cross-References

Definition of "obtain", 45-2-101.

Definition of "tamper", 45-2-101.

45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges; or

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

History: En. 94-6-304.2 by Sec. 2, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.2; amd. Sec. 1, Ch. 282, L. 1979.

45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, quadricycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had he known of it.

History: En. 94-6-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-305; amd. Sec. 14, Ch. 516, L. 1985.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "vehicle", 45-2-101.
Motor Vehicles, Title 61.
"Motorcycle" defined, 61-1-105.
"Quadricycle" defined, 61-1-133.

45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, the person purposely and knowingly fails to return the property within 48 hours after the time provided for return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding $500 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding $500 in value shall be imprisoned in the state prison for a term not to exceed 10 years.

History: En. Sec. 1, Ch. 239, L. 1981; amd. Sec. 3, Ch. 581, L. 1983; amd. Sec. 4, Ch. 616, L. 1993.

45-6-310. Definition — computer use. As used in 45-6-311, the term "obtain the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network or to cause another to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

History: En. Sec. 2, Ch. 485, L. 1981.

45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if the person knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding $500 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding $500 in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 3, Ch. 485, L. 1981; amd. Sec. 4, Ch. 581, L. 1983; amd. Sec. 5, Ch. 616, L. 1993.

45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if the person knowingly:

(a) acquires, purchases, possesses, or uses any food stamp or coupon that the person is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds $500,

shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7. U.S.C. 2011 through 2029, or any similar public assistance program.

History: En. Sec. 1, Ch. 87, L. 1983; amd. Sec. 6, Ch. 616, L. 1993.

Cross-References

"Common scheme" defined, 45-2-101.

45-6-313. Medicaid fraud. (1) A person commits the offense of medicaid fraud when:

(a) the person obtains a medicaid payment or benefit for the person or another person by purposely or knowingly:

(i) making, submitting, or authorizing the making or submitting of a false or misleading medicaid claim, statement, representation, application, or document to a medicaid agency for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed; or

(ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement, representation, application, or document under the medicaid program for a service or item when the person knows or has reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefit for the service or item or for the amount of payment requested or claimed;

(b) the person purposely or knowingly:

(i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the medicaid program; or

(ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient to another provider for the furnishing of services or items for which payment may be made under the medicaid program; or

(c) the person, with respect to a managed care contract, health maintenance organization contract, or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to provide covered medically necessary services to eligible recipients as required by the contract.

(2) Any conduct or activity that does not violate or that is protected under the provisions of, or federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is not considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.

(3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance upon the written authorization or advice of the department.

(4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims not exceeding $500 in value shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term not less than 30 days or more than 1 year.

(b) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims exceeding $500 in value shall be fined an amount not to exceed the greater of $50,000 or 10 times the value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of payments or benefits involved is the greater of the value of medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

(d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same transaction may be aggregated in determining the value involved.

(e) A person convicted of the offense of medicaid fraud must be suspended from participation in the medicaid program:

(i) for any period of time not less than 1 year for a first offense, or the person may be permanently terminated from participation in the medical assistance program;

(ii) for any period of time not less than 3 years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or

(iii) permanently for a third offense.

(5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not entitled to bill or collect from the recipient, the medicaid program, or any other third-party payor for the services or items involved and shall repay to the medicaid program any payments or benefits obtained by any person for the services or items involved.

(6) The establishment of the criminal offenses specified in this section does not preclude the application of any other provision of law.

History: En. Sec. 7, Ch. 354, L. 1995.

Compiler's Comments

Effective Date: Section 19(1), Ch. 354, L. 1995, provided that this section was effective on passage and approval. Approved April 11, 1995.

45-6-314. Theft by disposal of stolen property. A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested him to hold the property for 30 days, as provided in 46-5-212, commits the offense of theft as defined in 45-6-301.

History: En. Sec. 1, Ch. 470, L. 1989.

Cross-References

Definition of "peace officer", 45-2-101.
Definition of "stolen property", 45-2-101.
Penalty for theft, 45-6-301.
Pawnbroker to surrender stolen property, 46-5-212.

45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code (30-1-201(37)).

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value therefrom may be prosecuted under 45-6-301.

History: En. 94-6-313 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 367, L. 1975; R.C.M. 1947, 94-6-313.

Cross-References

Definition of "security interest", 30-1-201.

Definition of "property", 45-2-101.

Definition of "purpose", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the offender knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds $500, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-309; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 581, L. 1983; amd. Sec. 1, Ch. 383, L. 1985; amd. Sec. 7, Ch. 616, L. 1993.

Cross-References

Treble damages for issuing bad check, 27-1-717.

Definition of "common scheme", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "value", 45-2-101.

45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when the person purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting the financial condition of the person making or directing another to make the statement for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card that has expired when the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds $500, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-6-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 23, Ch. 359, L. 1977; R.C.M. 1947, 94-6-307; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 6, Ch. 581, L. 1983; amd. Sec. 8, Ch. 616, L. 1993.

Cross-References

Applicability of Real Estate License Act, 37-51-104.

Definition of "deception", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-318. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure;

(d) sells, offers, or exposes for sale adulterated commodities;

(e) sells, offers, or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage; or

(b) represented as being another person's produce though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-308.

Cross-References

Applicability of Real Estate License Act, 37-51-104.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-319. Chain distributor schemes. (1) As used in this section, the following definitions apply:

(a) "Person" means a natural person, corporation, partnership, trust, or other entity; and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity.

(b) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year or fined not to exceed $1,000, or both.

(4) Any person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or fined not to exceed $5,000, or both.

History: En. Secs. 1 to 3, Ch. 465, L. 1973; amd. Sec. 24, Ch. 359, L. 1977; R.C.M. 1947, 94-6-308.1.

45-6-320 through 45-6-324 reserved.

45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud the person knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers the document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds $500, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

History: En. 94-6-310 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-310; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 7, Ch. 581, L. 1983; amd. Sec. 9, Ch. 616, L. 1993.

Cross-References

Definition of "common scheme", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "property", 45-2-101.
Definition of "purpose", 45-2-101.
Definition of "value", 45-2-101.

45-6-326. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

History: En. 94-6-311 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 167, L. 1977; R.C.M. 1947, 94-6-311.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal responsibility of corporations, 45-2-311.

45-6-327. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-312 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-312; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "obtains or exerts control", 45-2-101.

Definition of "purpose", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 7

OFFENSES AGAINST PUBLIC ADMINISTRATION

Part 1 — Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters.
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45-7-501. Employer misconduct.

Part 1
Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both, and shall forever be disqualified from holding any public office in this state.

History: En. 94-7-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-102; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of "administrative proceeding", 45-2-101.

Definition of "benefit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "party official", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "solicit", 45-2-101.

Improperly influencing grain inspector, sampler, or weigher, 80-4-703.

45-7-102. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if the person purposely or knowingly:

(a) (i) threatens harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(ii) threatens harm to any public servant, to the public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(iii) threatens harm to any public servant or party official, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate the person's duty or to prevent the public servant or party official from accepting or holding any public office;

(iv) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law;

(v) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before the jury, except according to the regular course of proceedings; or

(b) injures the person or property of a public servant or injures the servant's spouse, child, parent, or sibling because of the public servant's lawful discharge of the duties of the office or to prevent the public servant from discharging the public servant's official duties.

(2) It is no defense to prosecution under subsections (1)(a)(i) through (1)(a)(iv) and (1)(b) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-7-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 25, Ch. 359, L. 1977; R.C.M. 1947, 94-7-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 351, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 351 in (1)(a)(i) at beginning after "threatens", deleted "unlawful" and after "any person" inserted "the person's spouse, child, parent, or sibling, or the person's property"; in (1)(a)(ii), after "any public servant", inserted "to the public servant's spouse, child, parent, or sibling, or to the public servant's property"; in (1)(a)(iii), after "party official", inserted "the person's spouse, child, parent, or sibling, or the person's property" and at end inserted "or to prevent the public servant or party official from accepting or holding any public office"; inserted (1)(b) regarding injury caused because of a public servant's lawful duties or to prevent the discharge of a public servant's lawful duties; in (3), after "section", deleted "shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender"; adjusted subsection references; and made minor changes in style. Amendment effective April 11, 1995.

Cross-References

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of "administrative proceeding", 45-2-101.

Definition of "party official", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "threat", 45-2-101.

Intimidation, 45-5-203.

45-7-103. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 26, Ch. 359, L. 1977; R.C.M. 1947, 94-7-104.

Cross-References

Definition of "administrative proceeding", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "solicit", 45-2-101.

45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) This section shall not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-105.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "pecuniary benefit", 45-2-101.
Definition of "public servant", 45-2-101.
Definition of "solicit", 45-2-101.

Part 2

Perjury and Other Falsification in Official Matters

45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

History: En. 94-7-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-202; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

General time limitations, 45-1-205.

Periods excluded from limitation, 45-1-206.

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "official proceeding", 45-2-101.

45-7-202. False swearing. (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing his official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) to (7) of 45-7-201 apply to this section.

(3) A person convicted of false swearing shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-203.

Cross-References

Deceptive election practices, 13-35-207.

Application for certain property classifications, 15-6-151.

False affirmation in response to elector challenge, 20-20-303.

Assumed business name filings — false swearing, 30-13-218.

Trademark filings — false swearing, 30-13-319.

Business corporation filings — false swearing, 35-1-428.

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

False information in driver's license application, 61-5-303.

Aircraft registration violations, 67-3-202.

False statement that public officer is not enforcing Montana Strip and Underground Mine Siting Act, 82-4-142.

False statement that public officer is not enforcing Montana Strip and Underground Mine Reclamation Act, 82-4-252.

Affidavit stating metal mine reclamation law is not being enforced, 82-4-354.

45-7-203. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading;

(c) submits or invites reliance on any writing which he knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-204 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-204.

Cross-References

Falsified petition for recall of a state-district officer, 2-16-612.

False report by employer of lobbyist, 5-7-209.

False entry upon a petition for ballot issue, 13-27-106.

Deceptive election practices, 13-35-207.

False statement to obtain unemployment benefits, 39-51-3202.

Definition of "benefit", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

45-7-204. False alarms to agencies of public safety. (1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-205.

Cross-References

Definition of "knowingly", 45-2-101.

Intimidation, 45-5-203.

45-7-205. False reports to law enforcement authorities. (1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-206 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-206.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or thing;

(c) elude legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-207 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 27, Ch. 359, L. 1977; R.C.M. 1947, 94-7-207; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "witness", 45-2-101.

45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-208 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-208; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-208. Tampering with public records or information. (1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or enactment, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept by others for information of the government;

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a); or

(c) purposely destroys, conceals, removes, or otherwise impairs the verity or availability of any such record, document, or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-209 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-209; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Tampering with petition for recall of a state-district officer, 2-16-612.

Tampering with petition for ballot issue, 13-27-106.

Tampering with election records and information, 13-35-205.

Tampering with election equipment, 13-35-206.

Deceptive election practices, 13-35-207.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-209. Impersonation of public servant. (1) A person commits the offense of impersonating a public servant if the person falsely pretends to hold a position in the public service with the purpose to induce another individual to submit to the pretended official authority or otherwise to act in reliance upon that pretense to the individual's prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed $5,000 or be imprisoned in the state prison for any term not to exceed 5 years, or both.

History: En. 94-7-210 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-210; amd. Sec. 2, Ch. 351, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 351 in (2) increased maximum fine from $500 to $5,000, changed place of imprisonment from the county jail to the state prison, and increased maximum prison term from 6 months to 5 years; and made minor changes in style. Amendment effective April 11, 1995.

Cross-References

Definition of "acts", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-210. False claims to public agencies. (1) A person commits an offense under this section if the person purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds $500, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

History: **En. Sec. 1, Ch. 151, L. 1981; amd. Sec. 8, Ch. 581, L. 1983; amd. Sec. 10, Ch. 616, L. 1993.**

Cross-References

Civil penalty for filing false claim, 17-8-231.

Part 3

Obstructing Governmental Operations

45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-301.**

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "peace officer", 45-2-101.

Definition of "threat", 45-2-101.

Use of force in defense of person, 45-3-102.

Use of force in resisting arrest, 45-3-108.

Method of arrest, 46-6-104.

Manner of arrest without a warrant, 46-6-312.

45-7-302. Obstructing a peace officer or other public servant. (1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed $500 or be imprisoned in the county ail for a term not to exceed 6 months, or both.

History: **En. 94-7-302 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-302.**

Cross-References

Definition of "public servant", 7-1-4138, 5-2-101.

Interference with election officials, 3-35-203.

Definition of "knowingly", 45-2-101.

Definition of "peace officer", 45-2-101.

Interference with commissioners of irrigation district, 85-7-1924.

45-7-303. Obstructing justice. (1) For the purpose of this section "an ffender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from such official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed 10 years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offender has been or is liable to be charged with a misdemeanor.

History: En. 94-7-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-303.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "offender", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "purposely", 45-2-101.

45-7-304. Failure to aid a peace officer. (1) A peace officer may order a person to cooperate where it is reasonable for the peace officer to enlist the cooperation of such person in:

(a) effectuating or securing an arrest of another pursuant to 46-6-402; or

(b) preventing the commission by another of an offense.

(2) A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(3) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-304.

Cross-References

Definition of "another", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "peace officer", 45-2-101.
Assisting a peace officer, 46-6-402.

45-7-305. Compounding a felony. (1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-305.

Cross-References

Definition of "felony", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "misdemeanor", 45-2-101.
Bribery in official and political matters, 45-7-101.

Gifts to public servants by person subject to their jurisdiction, 45-7-104.

45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, placement in a community corrections facility or program, supervision while under a supervised release program, participation in a county jail work program under 7-32-2225 through 7-32-2227, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is participating in a county jail work program under 7-32-2225 through 7-32-2227 and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from or while in transit to or from a state prison, county jail, city jail, community corrections facility or program, or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) has been charged with or convicted of a felony and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or

(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape, including escape while in transit to or from official detention, under circumstances other than (a) and (b) of this subsection.

History: En. 94-7-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-306; amd. Sec. 1, Ch. 72, L. 1981; amd. Sec. 8, Ch. 583, L. 1981; amd. Sec. 5, Ch. 361, L. 1989; amd. Sec. 1, Ch. 114, L. 1991; amd. Sec. 16, Ch. 554, L. 1991.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "peace officer", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "threat", 45-2-101.
Definition of "weapon", 45-2-101.
Resisting arrest, 45-7-301.
Escape while on prisoner furlough program, 46-23-426.
Expense of trial for offenses committed in prison, 53-30-110.

45-7-307. Transferring illegal articles or unauthorized communication. (1) (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed 20 years, if he conveys a weapon to a person subject to official detention;

(ii) imprisoned in the state prison for a term not to exceed 10 years, if he conveys a dangerous drug, as defined in 50-32-101, to a person subject to official detention; or

(iii) fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) Subsection (1)(b)(iii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both.

History: En. 94-7-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 28, Ch. 359, L. 1977; R.C.M. 1947, 94-7-307; amd. Sec. 1, Ch. 413, L. 1987.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "weapon", 45-2-101.

45-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed 10 years. In all other cases he shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-308.

Cross-References

Definition of "misdemeanor", 45-2-101.
Definition of "purposely", 45-2-101.
Escape, 45-7-306.
Bail, Title 46, ch. 9.

45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-309.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Part 4

Official Misconduct

45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his official capacity which he knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

History: En. 94-7-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 474, L. 1975; R.C.M. 1947, 94-7-401.

Cross-References

Meetings of public agencies to be open to public — exceptions, 2-3-203.

Discharge of election law duties, 13-35-204.

Prosecution of Commissioner of Political Practices, 13-37-105.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

Bribery in official and political matters, 45-7-101.

Gifts to public servants by person subject to their jurisdiction, 45-7-104.

Employee disclosure of information which would identify patient, 50-5-106.

Removal of Public Service Commission member, 69-1-113.

Official misconduct of official grain inspector, sampler, or weigher, 80-4-703.

Violations by Commissioner of irrigation district, 85-7-1507.

Part 5
Employer Misconduct

45-7-501. Employer misconduct. (1) A person who is an employer, as defined in 39-71-117, commits the offense of employer misconduct if he knowingly or purposely:

(a) avoids his responsibility to provide coverage for his employees as required by 39-71-401;

(b) misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of his employees; or

(c) refuses to pay premiums that he is obligated to pay under compensation plan No. 2, as provided in Title 39, chapter 71, part 22, or compensation plan No. 3, as provided in Title 39, chapter 71, part 23.

(2) A person convicted of the offense of employer misconduct shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. Sec. 2, Ch. 586, L. 1987.

CHAPTER 8
OFFENSES AGAINST PUBLIC ORDER

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Part 1

Conduct Disruptive of Public Order

45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms, except at a shooting range during established hours of operation;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire or other catastrophe in such a place that its occurrence would endanger human life;

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

(j) transmitting a false report or warning of an impending explosion in such a place that its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101; amd. Sec. 1, Ch. 508, L. 1989; amd. Sec. 8, Ch. 415, L. 1991.

Cross-References

Motorboat noise limitation — violation as disorderly conduct, 23-2-526, 87-1-506.

Knowingly defined, 45-2-101.

45-8-102. Failure of disorderly persons to disperse. (1) Where two or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-102.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Purposely defined, 45-2-101.

45-8-103. Riot. (1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) Except as provided in subsection (3), a person convicted of the offense of riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of riot by engaging in an act of violence while incarcerated at any state adult correctional facility or city or county jail shall be imprisoned for not less than 1 year or more than 5 years.

History: En. 94-8-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-103; amd. Sec. 1, Ch. 54, L. 1983.

Cross-References

Act defined, 45-2-101.
Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Threat defined, 45-2-101.
Failure of disorderly persons to disperse, 45-8-102.

45-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas or expression of belief which advocacy or expression does not urge the commission of an act of immediate violence.

(2) Except as provided in subsection (3), a person convicted of the offense of incitement to riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of incitement to riot while incarcerated at any state adult correctional facility shall be imprisoned for not less than 1 year or more than 5 years.

History: En. 94-8-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-104; amd. Sec. 2, Ch. 54, L. 1983.

Cross-References

Act defined, 45-2-101.
Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Solicitation, 45-4-101.
Riot, 45-8-103.

45-8-105. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime, malicious damage or injury to property, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism;

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed 10 years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 29, Ch. 359, L. 1977; R.C.M. 1947, 94-7-503.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Purposely defined, 45-2-101.

45-8-106. Bringing armed men into the state. (1) A person commits the offense of bringing armed men into the state when he knowingly brings or aids in bringing into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-504; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Right to bear arms, Art. II, sec. 12, Mont. Const.
Treason, Art. II, sec. 30, Mont. Const.
Civilian control of the military, Art. II, sec. 32, Mont. Const.
Importation of armed persons, Art. II, sec. 33, Mont. Const.
Militia, Title 10, ch. 1.
Knowingly defined, 45-2-101.
Offense defined, 45-2-101.

45-8-107. Purpose. The legislature recognizes every citizen's constitutional right to express beliefs on any subject, to associate with others who share similar beliefs, and to keep or bear arms in defense of home, person, or property. Sections 45-8-107 through 45-8-109 are not intended to interfere with the exercise of rights protected by the United States constitution or the state constitution. The legislature finds that conspiracies and training activities in the furtherance of unlawful acts of violence against persons or property are not constitutionally protected, pose a threat to public order and safety, and are subject to criminal penalties.

History: En. Sec. 1, Ch. 492, L. 1991.

45-8-108. Definitions. As used in 45-8-107 through 45-8-109, unless the context requires otherwise, the following definitions apply:

(1) "Civil disorder" means a public disturbance involving unlawful acts of violence by a group of two or more persons that causes an immediate danger of or results in injury to the property or person of any other individual.

(2) "Governmental military force" means:

(a) the national guard as defined in 10 U.S.C. 101;

(b) the organized militia of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia not included in the definition of the national guard; and

(c) the armed forces of the United States.

(3) "Law enforcement agency" means a department of public safety, a police department, a sheriff's department, the highway patrol, or a governmental unit of one or more persons employed by the state or federal government or a political subdivision of the state or federal government, for the purpose of detecting and preventing crime and enforcing laws or ordinances, whose employees are authorized to make arrests for crimes while acting in the scope of their authority.

(4) "Peace officer" has the meaning given in 45-2-101.

History: En. Sec. 2, Ch. 492, L. 1991.

45-8-109. Prohibited activities — penalties — exceptions. (1) A person is guilty of a crime if, with one or more other persons, the person purposely or knowingly assembles for the purpose of training in, instructing in the use of, or practicing with any technique or means capable of causing property damage, bodily injury, or death, with the purpose of employing the training, instruction, or practice in a civil disorder.

(2) A person convicted of violating the provisions of subsection (1) is guilty of a felony and shall be imprisoned in the state prison for a period not to exceed 10 years or be fined not to exceed $50,000, or both.

(3) Subsection (1) does not prohibit:

(a) an act protected pursuant to Article II of the Montana constitution;

(b) an act of a governmental military force;

(c) an act of a peace officer performed in the lawful performance of the officer's duties;

(d) an authorized activity of the department of fish, wildlife, and parks; the department of corrections; a law enforcement agency; or the law enforcement academy;

(e) training in nonviolent civil disobedience techniques;

(f) lawful self-defense or defense of others or an activity intended to teach or practice self-defense or self-defense techniques; or

(g) a facility, program, or lawful activity related to firearms instruction or training intended to teach the safe handling and use of firearms or activities or sports related to recreational use or possession of firearms.

(4) Sections 45-8-107 through 45-8-109 do not apply to an employer or employees involved in a labor dispute.

History: En. Sec. 3, Ch. 492, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 201, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (3)(d) substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

45-8-110 reserved.

45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

(6) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(1) thru (4); amd. Sec. 2, Ch. 123, L. 1981; amd. Sec. 9, Ch. 415, L. 1991.

Cross-References

Liability for permitting irrigation water to overflow, 7-14-2141.

Selling liquor illegally on premises, 16-6-312.

Motorboat noise limitation — violation as public nuisance, 23-2-526, 87-1-506.

Nuisances, Title 27, ch. 30.

Mausoleum or columbarium constructed in violation of law, 35-21-712.

Knowingly defined, 45-2-101.

Property defined, 45-2-101.

45-8-112. Action to abate a public nuisance. (1) Every public nuisance may be abated and the persons maintaining such nuisance and the possessor of the premises who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(2) Upon the filing of the complaint in such action, the judge may issue a temporary injunction.

(3) In such action evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance.

(4) If the existence of the nuisance is established, an order of abatement shall be entered as part of the judgment in the case. The judge issuing the order may, in his discretion:

(a) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(b) close the premises for any period not to exceed 1 year, during which period the premises shall remain in the custody of the court;

(c) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond shall be as provided in 46-9-502 and 46-9-503; or

(d) any combination of the above.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(5).

Cross-References

Nuisance, Title 27, ch. 30.

Premises defined, 45-2-101.

Public nuisance, 45-8-111.

Conditions of bail — violation thereof, 46-9-108, 46-9-502, 46-9-503, 46-9-505, 46-9-512.

45-8-113. Creating a hazard. (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 1/2 cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler which is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-108 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 31, Ch. 359, L. 1977; R.C.M. 1947, 94-8-108.

Cross-References

Knowingly defined, 45-2-101.

Negligently defined, 45-2-101.

Possession defined, 45-2-101.

Tamper defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Assault — negligently causing bodily injury to another, 45-5-201.

45-8-114. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department or for medical aid or ambulance service shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call, knowing such pretext to be false, shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(4) Every telephone company doing business in this state shall print a copy of subsections (1), (2), and (3) of this section in each telephone directory published by it after January 1, 1974.

History: En. 94-8-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-109.

Cross-References

Knowingly defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-8-115. Illegal posting of state and federal land. (1) A person commits the offense of illegal posting of state or federal land if, without authorization, he knowingly posts land that is under the ownership or control of the state or federal government to restrict access or use of state or federal land.

(2) A person convicted of illegal posting of state or federal land shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 1, Ch. 743, L. 1991.

Part 2

Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in subsection (2)(a)(i), (ii), or (iii) in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of 45-8-206 and this section.

History: En. 94-8-110 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 407, L. 1975; R.C.M. 1947, 94-8-110; amd. Sec. 1, I.M. 79, app. Nov. 7, 1978; amd. Sec. 5, Ch. 571, L. 1989.

Cross-References

Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Indecent exposure, 45-5-504.

45-8-202. Repealed. Sec. 7, Ch. 571, L. 1989.

History: En. Secs. 1 to 3, Ch. 463, L. 1973; amd. Sec. 2, Ch. 407, L. 1975; amd. Sec. 1, Ch. 391, L. 1977; R.C.M. 1947, 94-8-110.1.

45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, “employee” means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. “Employee” does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and 45-8-206 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

History: **En. 94-8-110.3 by Sec. 1, Ch. 76, L. 1974; R.C.M. 1947, 94-8-110.3; amd. Sec. 6, Ch. 571, L. 1989.**

45-8-204. Repealed. Sec. 18, Ch. 440, L. 1989.

History: **En. Secs. 1 to 4, Ch. 430, L. 1973; amd. Sec. 32, Ch. 359, L. 1977; R.C.M. 1947, 94-8-110.2.**

45-8-205. Definitions. As used in 45-8-205 through 45-8-208, the following definitions apply:

(1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

(3) "Minor" means a person under 18 years of age.

(4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience of one or more, with or without consideration.

(6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

(8) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality.

History: **En. Sec. 1, Ch. 571, L. 1989.**

45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) he had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

History: En. Sec. 2, Ch. 571, L. 1989.

45-8-207. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of 45-8-206, he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending.

History: En. Sec. 3, Ch. 571, L. 1989.

45-8-208. Penalties. (1) A person who is convicted of violating 45-8-206 is guilty of a misdemeanor and may be fined an amount not to exceed $500 or be imprisoned for a term not to exceed 6 months, or both.

(2) For purposes of 45-8-206, multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

History: **En. Sec. 4, Ch. 571, L. 1989.**

45-8-209. Harming a police dog — penalty. (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) As used in this section, the following definitions apply:

(a) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-202.

(b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in 7-32-201, in the exercise of its authority;

(ii) specifically trained for law enforcement work; and

(iii) under the control of a law enforcement officer.

History: **En. Secs. 1, 2, Ch. 536, L. 1985; amd. Sec. 1, Ch. 258, L. 1989; amd. Sec. 258, Ch. 800, L. 1991.**

45-8-210. Causing animals to fight — owners, trainers, and spectators — penalties — exception — definition. (1) A person commits the offense of causing animals to fight if he:

(a) owns, possesses, keeps, or trains any animal with the intent that such animal fight or be engaged in an exhibition of fighting with another animal;

(b) allows or causes any animal to fight with another animal or causes any animal to menace or injure another animal for the purpose of sport, amusement, or gain;

(c) knowingly permits any act in violation of subsection (1)(a) or (1)(b) to take place on any premises under his charge or control, or aids or abets any such act;

(d) participates in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

(2) A person convicted of violating this section is guilty of a felony and shall be fined an amount not to exceed $5,000 or imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both such fine and imprisonment.

(3) Nothing in this section prohibits the following:

(a) accepted husbandry practices used in the raising of livestock or poultry;

(b) the use of animals in the normal and usual course of rodeo events; or

(c) the use of animals in hunting and training as permitted by law.

(4) For purposes of this section, "animal" means any cock, bird, dog, or mammal except man.

History: **En. Secs. 2, 3, Ch. 410, L. 1985.**

45-8-211. Cruelty to animals — exception. (1) A person commits the offense of cruelty to animals if without justification the person knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying or confining any animal in a cruel manner;

(c) failing to provide an animal in the person's custody with:

(i) proper food, drink, or shelter; or

(ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2) (a) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second or subsequent offense of cruelty to animals shall be fined not to exceed $1,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(b) If the convicted person is the owner, the person may be required to forfeit to the county in which the person is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may:

(a) require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected; and

(b) prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate during the term of the sentence.

(4) Nothing in this section prohibits:

(a) a person from humanely destroying an animal for just cause; or

(b) the use of commonly accepted agricultural and livestock practices on livestock.

History: En. 94-8-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-106; amd. Sec. 1, Ch. 148, L. 1985; amd. Sec. 1, Ch. 410, L. 1985; amd. Sec. 1, Ch. 424, L. 1991; amd. Sec. 1, Ch. 556, L. 1993.

Cross-References

Knowingly defined, 45-2-101.

Negligently defined, 45-2-101.

Farm animal and research facility protection — exemptions, 81-30-103.

45-8-212. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to his or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

History: En. 94-8-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-111.

Cross-References

Defamatory matter defined, 45-2-101.

Knowledge defined, 45-2-101.

Official proceeding defined, 45-2-101.

Person defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the same to have been unlawfully opened.

(2) (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both.

History: En. 94-8-114 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 33, Ch. 359, L. 1977; R.C.M. 1947, 94-8-114; amd. Sec. 1, Ch. 356, L. 1979; amd. Sec. 1, Ch. 177, L. 1991.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

Threat defined, 45-2-101.

Control of telephone communication to and from a person holding hostages — nonliability of telephone company officials, 69-6-104.

45-8-214. Bribery in contests. (1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-8-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-112.

Cross-References

Benefit defined, 45-2-101.

Knowingly defined, 45-2-101.

Pecuniary defined, 45-2-101.

Purposely defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-8-215. Desecration of flags. (1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag;

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered;

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

History: En. 94-7-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-502; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

45-8-216. Unlawful automated telephone solicitation — exceptions — penalties. (1) A person may not use an automated telephone system, device, or facsimile machine for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number for the purpose of:

(a) offering goods or services for sale;

(b) conveying information on goods or services in soliciting sales or purchases;

(c) soliciting information;

(d) gathering data or statistics; or

(e) promoting a political campaign or any use related to a political campaign.

(2) This section does not prohibit the use of an automated telephone system, device, or facsimile machine described under subsection (1) for purposes of informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services, of responding to an inquiry initiated by any person, or of providing any other pertinent information when there is a preexisting business relationship. This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered.

(3) A person violating subsection (1) is subject to a fine of not more than $2,500.

History: En. Sec. 1, Ch. 230, L. 1991.

Part 3
Weapons

45-8-301. Uniformity of interpretation. Sections 45-8-302 through 45-8-309 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 11, Ch. 43, L. 1935; re-en. Sec. 11317.10, R.C.M. 1935; Sec. 94-3110, R.C.M. 1947; redes. 94-8-209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-209.

45-8-302. Definitions. In 45-8-303 through 45-8-309, the following definitions apply:

(1) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: any forcible felony, robbery, burglary, and criminal trespass.

(2) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device.

(3) "Person" includes a firm, partnership, association, or corporation.

History: En. Sec. 1, Ch. 43, L. 1935; re-en. Sec. 11317.1, R.C.M. 1935; Sec. 94-3101, R.C.M. 1947; redes. 94-8-201 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 34, Ch. 359, L. 1977; R.C.M. 1947, 94-8-201.

Cross-References

Forcible felony defined, 45-2-101.
Person defined, 45-2-101.
Weapon defined, 45-2-101.
Robbery, 45-5-401.
Criminal trespass, 45-6-202, 45-6-203.
Burglary, 45-6-204.

45-8-303. Possession or use of machine gun in connection with a crime. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 20 years.

History: En. Sec. 2, Ch. 43, L. 1935; re-en. 11317.2, R.C.M. 1935; Sec. 94-3102, R.C.M. 1947; redes. 94-8-202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-202.

Cross-References

Possession defined, 45-2-101.
Attempt, 45-4-103.
Aggravated assault, 45-5-202.

45-8-304. Possession or use of machine gun for offensive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 10 years.

History: En. Sec. 3, Ch. 43, L. 1935; re-en. Sec. 11317.3, R.C.M. 1935; Sec. 94-3103, R.C.M. 1947; redes. 94-8-203 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-203.

Cross-References

Possession defined, 45-2-101.

45-8-305. Presumption of offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions;

(3) when the machine gun is of the kind described in 45-8-309 and has not been registered as required in that section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

History: En. Sec. 4, Ch. 43, L. 1935; re-en. Sec. 11317.4, R.C.M. 1935; Sec. 94-3104, R.C.M. 1947; amd. and redes. 94-8-204 by Sec. 26, Ch. 513, L. 1973; amd. Sec. 35, Ch. 359, L. 1977; R.C.M. 1947, 94-8-204.

Cross-References

Conviction defined, 45-2-101.

Possession defined, 45-2-101.

Premises defined, 45-2-101.

Possession or use of a machine gun for offensive or aggressive purpose, 45-8-304.

45-8-306. Presence of gun as evidence of possession or use. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

History: En. Sec. 5, Ch. 43, L. 1935; re-en. Sec. 11317.5, R.C.M. 1935; Sec. 94-3105, R.C.M. 1947; redes. 94-8-205 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-205.

Cross-References

Vehicle defined, 45-2-101.

Weapon defined, 45-2-101.

Presumption of offensive or aggressive purpose, 45-8-305.

45-8-307. Exceptions. Nothing contained in 45-8-301 through 45-8-309 shall prohibit or interfere with:

(1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof or the transportation required for that purpose;

(2) the possession of a machine gun for scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) the possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber for a purpose manifestly not aggressive or offensive.

History: En. Sec. 6, Ch. 43, L. 1935; re-en. Sec. 11317.6, R.C.M. 1935; Sec. 94-3106, R.C.M. 1947; redes. 94-8-206 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-206.

Cross-References

Possession defined, 45-2-101.

45-8-308. Manufacturer's register of machine guns. (1) Every manufacturer shall keep a register of all machine guns manufactured or handled by him.

(2) This register shall show, for every machine gun:

(a) the model and serial number;

(b) the date of manufacture, sale, loan, gift, delivery, or receipt;

(c) the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered or from whom it was received; and

(d) the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered or from whom received.

(3) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his entire stock of machine guns, parts, and supplies therefor and shall produce the register herein required for inspection.

(4) A violation of any provision of this section shall be punishable by a fine of not less than $100.

History: En. Sec. 7, Ch. 43, L. 1935; re-en. Sec. 11317.7, R.C.M. 1935; Sec. 94-3107, R.C.M. 1947; redes. 94-8-207 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-207.

Cross-References

Purchase of rifle or shotgun in contiguous state by Montana resident, 45-8-341.

Purchase of rifle or shotgun in Montana by resident of contiguous state, 45-8-342.

45-8-309. Registration of machine guns — presumption from failure to register. (1) Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered with the department of justice annually on February 20. If acquired hereafter it shall be registered within 24 hours after its acquisition.

(2) Blanks for registration shall be prepared by the department and furnished upon application.

(3) To comply with this section the application as filed must show the model and serial number of the gun, the name, address, and occupation of the person in possession, and from whom and the purpose for which the gun was acquired.

(4) The registration data shall not be subject to inspection by the public.

(5) Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose.

History: En. Sec. 8, Ch. 43, L. 1935; re-en. Sec. 11317.8, R.C.M. 1935; Sec. 94-3108, R.C.M. 1947; redes. 94-8-208 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-208.

Cross-References

Presumption of offensive or aggressive purpose, 45-8-305.

45-8-310 through 45-8-312 reserved.

45-8-313. Unlawful possession of firearm by convicted person. (1) A person commits the offense of unlawful possession of a firearm by a convicted person if the person purposely or knowingly purchases or possesses a firearm after the person has been convicted of:

(a) a felony for which the person received an additional sentence under 46-18-221; or

(b) an offense under the law of another state or of the United States that is equivalent to an offense that when committed in Montana is subject to an additional sentence under 46-18-221.

(2) A person convicted of unlawful possession of a firearm by a convicted person shall be imprisoned in a state prison for not less than 2 years or more than 10 years.

(3) A person who has been issued a permit under 45-8-314 may not be convicted of a violation of this section.

History: En. Sec. 2, Ch. 555, L. 1995.

Compiler's Comments

Applicability: Section 6, Ch. 555, L. 1995, provided: "(1) [Section 2(1)] [45-8-313(1)] does not apply to a person convicted of an offense referred to in [section 2(1)] [45-8-313(1)] before the effective date of this act] [effective October 1, 1995].

(2) [Section 3] [45-8-314] applies only to sentences imposed after [the effective date of this act] [effective October 1, 1995].

(3) [Section 1] [46-18-801] applies retroactively, within the meaning of 1-2-109."

45-8-314. Lifetime firearms supervision of certain convicted persons. (1) For the purposes of rehabilitation and public protection, a person convicted of an offense referred to in 45-8-313 shall, as part of the sentence imposed, be sentenced to life supervision by the state for the purpose of restricting the person's right to purchase and possess firearms. Active supervision by a probation or parole officer is not required but may be imposed by the court. "Supervision" means that the person may not violate 45-8-313 and must comply with other state and federal law restrictions on the purchase and possession of firearms.

(2) (a) A person subject to subsection (1) may apply to the district court for the county in which the person resides for a permit to purchase and possess one or more firearms. The person shall show good cause for the possession of each firearm sought to be purchased and possessed. The grant or denial of the application does not prevent the person from making another application, except that if an application is denied, another application may not be made for the next 12 months.

(b) The application must contain the following information:

(i) the person's full name and any past or present aliases;

(ii) the person's date and place of birth;

(iii) the person's address;

(iv) the person's occupation;

(v) the make and model of each firearm sought to be purchased and possessed;

(vi) the date and place of each conviction of an offense referred to in 45-8-313, the name of the offense, the state and county in which the offense occurred, the sentence imposed, the place or places of incarceration, and the date of discharge from supervision for the last offense;

(vii) the name and business address of the person's last probation or parole officer; and

(viii) any other information considered necessary by the court.

(c) The person shall, at the time of filing the application with the court, mail a copy to the county attorney and county sheriff.

(d) The county attorney or county sheriff may file a written objection with the court. If no objection is filed, the court may grant the permit if it finds that the person has shown good cause to purchase and possess the firearm or firearms listed in the application. If an objection is filed, a hearing must be held within 60 days after the filing of the objection. If the court first finds that the person has shown good cause to purchase and possess the firearm or firearms listed in the application and that, but for the objection, the court would have granted a permit, the court shall decide whether the objection is valid and overrides the good cause showing and requires denial of the permit.

History: En. Sec. 3, Ch. 555, L. 1995.

Compiler's Comments

Applicability: Section 6, Ch. 555, L. 1995, provided: "(1) [Section 2(1)] [45-8-313(1)] does not apply to a person convicted of an offense referred to in [section 2(1)] [45-8-313(1)] before [the effective date of this act] [effective October 1, 1995].

(2) [Section 3] [45-8-314] applies only to sentences imposed after [the effective date of this act] [effective October 1, 1995].

(3) [Section 1] [46-18-801] applies retroactively, within the meaning of 1-2-109."

45-8-315. Definition. "Concealed weapon" means any weapon mentioned in 45-8-316 through 45-8-318 and 45-8-321 through 45-8-328 that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon.

History: En. Sec. 6, Ch. 74, L. 1919; re-en. Sec. 11307, R.C.M. 1921; re-en. Sec. 11307, R.C.M. 1935; Sec. 94-3530, R.C.M. 1947; redes. 94-8-215 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-215; amd. Sec. 9, Ch. 759, L. 1991.

Cross-References

Weapon defined, 45-2-101.

45-8-316. Carrying concealed weapons. (1) Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his person any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both.

History: En. Sec. 1, Ch. 74, L. 1919; re-en. Sec. 11302, R.C.M. 1921; re-en. Sec. 11302, R.C.M. 1935; Sec. 94-3525, R.C.M. 1947; redes. 94-8-210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 36, Ch. 359, L. 1977; amd. Sec. 1, Ch. 411, L. 1977; R.C.M. 1947, 94-8-210.

Cross-References

Offense defined, 45-2-101.

Concealed weapon defined, 45-8-315.

45-8-317. Exceptions. Section 45-8-316 and, except for a person referred to in subsection (7), 45-8-328 do not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(7) a person issued a permit under 45-8-321;

(8) an agent of the department of justice or a criminal investigator in a county attorney's office;

(9) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or

(10) the carrying of arms on one's own premises or at one's home or place of business.

History: En. Sec. 3, Ch. 74, L. 1919; re-en. Sec. 11304, R.C.M. 1921; re-en. Sec. 11304, R.C.M. 1935; Sec. 94-3527, R.C.M. 1947; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971; redes. 94-8-212 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 37, Ch. 359, L. 1977; R.C.M. 1947, 94-8-212; amd. Sec. 2, Ch. 639, L. 1989; amd. Sec. 10, Ch. 759, L. 1991.

45-8-318. Possession of deadly weapon by prisoner. (1) Every prisoner committed to the Montana state prison or incarcerated in a county jail, city jail, or regional jail who, while at the state prison or a jail, while being conveyed to or from the Montana state prison or a jail, while at a state prison farm or ranch, while being conveyed to or from any such place, or while under the custody of prison or jail officials, officers, or employees, purposely or knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a felony.

(2) He shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, such term of imprisonment to commence from the time he would otherwise have been released from jail or prison, or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 131, L. 1961; Sec. 94-3527.1, R.C.M. 1947; redes. 94-8-213 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-213; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 424, L. 1987.

Cross-References

Felony defined, 45-2-101.

Aggravated kidnapping, 45-5-303.

Transferring illegal or unauthorized communication, 45-7-307.

45-8-319. Repealed. Sec. 14, Ch. 759, L. 1991.

History: En. Sec. 5, Ch. 74, L. 1919; re-en. Sec. 11306, R.C.M. 1921; re-en. Sec. 11306, R.C.M. 1935; Sec. 94-3529, R.C.M. 1947; redes. 94-8-214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 38, Ch. 359, L. 1977; R.C.M. 1947, 94-8-214; amd. Sec. 3, Ch. 221, L. 1989.

45-8-320. Repealed. Sec. 1, Ch. 312, L. 1979.

History: En. Sec. 8, Ch. 74, L. 1919; re-en. Sec. 11309, R.C.M. 1921; re-en. Sec. 11309, R.C.M. 1935; Sec. 94-3532, R.C.M. 1947; redes. 94-8-217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-217.

45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence that the sheriff may or may not accept that the applicant, during military service, was found to be qualified to operate handguns.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's

passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm.

History: **En. Sec. 1, Ch. 759, L. 1991; amd. Sec. 1, Ch. 408, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 408 at end of (2) inserted requirement that if an application is denied, the Sheriff must give the applicant a written statement of the reasonable cause upon which the denial is based, unless the applicant is the subject of a criminal investigation; inserted (3)(e) relating to evidence that the applicant was found during military service to be qualified to operate handguns; inserted (5) allowing firearm familiarity to be demonstrated by passing to the satisfaction of the Sheriff or the Sheriff's designee a physical test in which the applicant demonstrates familiarity with a firearm; and made minor changes in style.

45-8-322. Application, renewal, permit, and fees. (1) The application form must be readily available at the sheriff's office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To be completed by each person making application:

RESIDENT OF MONTANA AT LEAST 6 MONTHS ( ) Yes ( ) No
CITIZEN OF THE UNITED STATES ( ) Yes ( ) No
18 YEARS OF AGE OR OLDER ( ) Yes ( ) No

PLEASE TYPE OR PRINT

Full name: ....
Last First Middle

Alias/Maiden/Nickname: ....

Address: Home: .... Zip ....

Employer: .... Zip ....

Phone: ..../......................./.......................
Home Employer Message

Place of birth: .... Date of birth: ....

Driver's license #: .... Issuing state: ....

Social Security #: ....

Sex .... Ht. .... Wt. .... Eyes .... Hair ....

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

	Employer or business name	Address	Dates of employment
1.	....	....	....
2.	....	....	....
3.	....	....	....
4.	....	....	....
5.	....	....	....
6.	....	....	....

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

	City	State	Dates of residence
1.	....	....	....
2.	....	....	....
3.	....	....	....
4.	....	....	....
5.	....	....	....
6.	....	....	....

MILITARY SERVICE, BRANCH .... FROM ...... TO ......

TYPE OF DISCHARGE .... RANK UPON DISCHARGE ....

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?

( ) YES ( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations) (Attach additional sheet if necessary):

	City	State	Charge	Date
1.	....	....	....	....
2.	....	....	....	....
3.	....	....	....	....
4.	....	....	....	....
5.	....	....	....	....

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

	Name	Address	Phone
1.	....	....	....
2.	....	....	....
3.	....	....	....

IN COMPLETE DETAIL, PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

....
....
....
....
....
....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement contained herein may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I hereby authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either public record or otherwise, to furnish it to the sheriff to whom this application is made.

....
Signature

....
Date of application

This application must be
signed in the presence of
the sheriff or his designee.

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is $50. The permit must be renewed for additional 4-year periods upon payment of a $25 fee per renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must at a minimum include the name, address, physical description, signature, driver's license or state identification card number, and a picture of the permittee. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a criminal record and background check of an applicant, may require an applicant to submit his fingerprints, and may charge the applicant $5 for fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit.

History: En. Sec. 2, Ch. 759, L. 1991.

45-8-323. Denial of renewal — revocation of permit. A permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which the permittee resides if circumstances arise that would require the sheriff to refuse to grant the permittee an original license.

History: En. Sec. 3, Ch. 759, L. 1991.

45-8-324. Appeal. The denial or revocation of a permit to carry a concealed weapon or refusal of a renewal is subject to appeal to the district court, which may consider and determine facts as well as law and which is not bound by any factual, legal, or other determination of the sheriff, and from that court to the Montana supreme court. To the extent applicable, Title 25, chapter 33, governs the appeal.

History: En. Sec. 4, Ch. 759, L. 1991; amd. Sec. 2, Ch. 408, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 408 in first sentence inserted "which may consider and determine facts as well as law and which is not bound by any factual, legal, or other determination of the sheriff"; and at end inserted "To the extent applicable, Title 25, chapter 33, governs the appeal."

45-8-325. Permittee change of county of residence — notification to sheriffs and chief of police. A person with a permit to carry a concealed weapon who changes his county of residence shall within 10 days of the change inform the sheriffs of both the old and new counties of residence of his change of residence and that he holds the permit. If his residence changes either from or to a city or town with a police force, he shall also inform the chief of police in each of those cities or towns that has a police force.

History: En. Sec. 5, Ch. 759, L. 1991.

45-8-326. Immunity from liability. A sheriff, employee of a sheriff's office, or county is not liable for damages in a civil action by a person or entity claiming death, personal injury, or property damage arising from alleged wrongful or improper grant of, renewal of, or failure to revoke a permit to carry a concealed weapon, except for actions that constitute willful misconduct or gross negligence.

History: En. Sec. 6, Ch. 759, L. 1991.

45-8-327. Carrying a concealed weapon while under the influence. A person commits the offense of carrying a concealed weapon while under the influence if he purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

History: En. Sec. 7, Ch. 759, L. 1991.

45-8-328. Carrying concealed weapon in a prohibited place. (1) A person commits the offense of carrying a concealed weapon in a prohibited place if he purposely or knowingly carries a concealed weapon in:

(a) a building owned or leased by the federal, state, or local government;

(b) a bank, credit union, savings and loan institution, or similar institution; or

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

History: En. Sec. 8, Ch. 759, L. 1991.

Cross-References

Offense defined, 45-2-101.

45-8-329. Concealed weapon permit reciprocity agreements — advisory council. (1) The governor may negotiate concealed weapon permit reciprocity agreements with other states that have concealed weapon permit laws similar to those of Montana.

(2) The governor shall establish a council, composed of interested persons, including law enforcement personnel and gun owners, to advise the governor on and pursue reciprocity issues and agreements.

History: En. Sec. 3, Ch. 408, L. 1995.

45-8-330. Exemption of concealed weapon permittee from federal handgun purchase background check and waiting period. A person possessing a concealed weapon permit is:

(1) considered to have a permit constituting completion of the background check required by 18 U.S.C. 921 through 925A; and

(2) is exempt from that act's 5-day waiting period for the purchase of a handgun. *(Subsections (1) and (2) terminate on the elimination of federal statutory or case law requirements.)*

History: En. Sec. 4, Ch. 408, L. 1995.

Compiler's Comments

Purported Enactment — Coordination Instruction: Section 3, Ch. 289, L. 1995, provided: "If House Bill No. 232 is passed and approved with a provision exempting a concealed weapon permittee from the federal handgun purchase background check and 5-day waiting period, then [this act] [approved as Ch. 289, L. 1995] is void." House Bill No. 232 was approved April 13, 1995, as Ch. 408, L. 1995, and included a section exempting a concealed weapon permittee from the federal handgun purchase background check and 5-day waiting period; therefore, sec. 1, Ch. 289, L. 1995, which purported to enact a section waiving the 5-day handgun purchase waiting period, is void.

Reference in Text: The reference in subsection (1) to 18 U.S.C. 921 through 925A is to part of the federal statute commonly known as the "Brady Bill".

Contingent Termination: Section 5, Ch. 408, L. 1995, provided that subsection (1) terminates on the date on which the Governor certifies that the federal background check referred to in subsection (1) is no longer required by federal statutory or case law and that subsection (2) terminates on the date on which the Governor certifies that the federal 5-day waiting period referred to in subsection (2) is no longer required by federal statutory or case law.

45-8-331. Switchblade knives. (1) Every person who carries or bears upon his person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding $500 or by imprisonment in the county jail for a period not exceeding 6 months or by both such fine and imprisonment.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which said collection is located is hereby exempted from the provisions of this section.

(3) For the purpose of this section a switchblade knife is defined as any knife which has a blade 1 1/2 inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R.C.M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-226.

Cross-References

Person defined, 45-2-101.

Vehicle defined, 45-2-101.

45-8-332. Definitions. (1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in rules adopted by the department of justice pursuant to 50-3-102(3).

History: En. Sec. 1, Ch. 304, L. 1971; Sec. 69-1931, R.C.M. 1947; amd. and redes. 94-8-209.1 by Sec. 72, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.1; amd. Sec. 1, Ch. 187, L. 1985; amd. Sec. 1, Ch. 706, L. 1991.

Cross-References

Weapon defined, 45-2-101.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Additional sentence for use of destructive device, 46-18-221.

45-8-333. Reckless or malicious use of explosives. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a misdemeanor.

History: En. Sec. 713, Pen. C. 1895; re-en. Sec. 8551, Rev. C. 1907; re-en. Sec. 2812, R.C.M. 1921; re-en. Sec. 2812, R.C.M. 1935; R.C.M. 1947, 69-1927.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Misdemeanor defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Definitions, 45-8-332.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

When no penalty is specified, 46-18-212.

Action in response to complaints related to use of explosives in mining, 82-4-356.

45-8-334. Possession of a destructive device. (1) A person who, with the purpose to commit a felony, has in his possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years or be fined an amount of not more than $50,000, or both.

History: En. Sec. 2, Ch. 304, L. 1971; Sec. 69-1932, R.C.M. 1947; amd. and redes. 94-8-209.2 by Sec. 73, Ch. 359, L. 1977; R.C.M 1947, 94-8-209.2; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Felony defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purpose defined, 45-2-101.

Destructive device defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of explosives, 45-8-335.

Possession prima facie evidence of unlawful purpose, 45-8-337.

Administrative rules governing use of explosives — Department of Justice, 50-3-102.

45-8-335. Possession of explosives. (1) A person commits the offense of possession of explosives if he possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

(a) has the purpose to use such explosive, material, or device to commit an offense; or

(b) knows that another has the purpose to use such explosive, material, or device to commit an offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-105 by Sec. 1, Ch. 513, L. 1973; Sec. 94-6-105, R.C.M. 1947; amd. and redes. 94-8-209.3 by Sec. 74, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.3; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purposely defined, 45-2-101.

When accountability exists, 45-2-302.

Definitions, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession prima facie evidence of unlawful purpose, 45-8-337.

Administrative rules governing use of explosives — Department of Justice, 50-3-102.

45-8-336. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or a fine of not less than $1,000 or more than $20,000 or by both such fine and imprisonment.

History: En. 94-8-209.4 by Sec. 75, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.4.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purposely defined, 45-2-101.

Possession prima facie evidence of unlawful purpose, 45-8-337.

45-8-337. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

History: En. 94-8-209.5 by Sec. 76, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.5.

Cross-References

Offense defined, 45-2-101.

Possession defined, 45-2-101.

Purpose defined, 45-2-101.

Definitions, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

45-8-338 reserved.

45-8-339. Carrying firearms on train — penalty. (1) Except as authorized by the management of a railroad, it is unlawful for a person not authorized to carry a weapon in the course of his official duties to knowingly or purposely carry or transport firearms on a train in this state unless, prior to boarding, the person has delivered all firearms and ammunition, if any, to the operator of the train.

(2) A person violating this section shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

History: En. Sec. 1, Ch. 601, L. 1991.

45-8-340. Sawed-off firearm — penalty. (1) A person commits the offense of possession of a sawed-off firearm if he knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both, are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

(a) by a peace officer of this state or one of its political subdivisions;

(b) by an officer of the United States government authorized to carry weapons;

(c) by a person in actual service as a national guardsman;

(d) by a person called to the aid of one of the persons named in subsections (3)(a) through (3)(c);

(e) for educational or scientific purposes in which the firearms are incapable of being fired;

(f) by a person who has a valid federal tax stamp for the firearm, issued by the bureau of alcohol, tobacco, and firearms; or

(g) by a bona fide collector of firearms if the firearm is a muzzleloading, sawed-off firearm manufactured before 1900.

(4) A person convicted of the offense of possession of a sawed-off firearm must be fined not less than $200 or more than $500 or imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has one or more prior convictions under this section or one or more prior felony convictions under a law of this state, another state, or the United States, he must be fined an amount not to exceed $1,000 or imprisoned in the state prison for a term not to exceed 5 years, or both.

History: **En. Sec. 1, Ch. 334, L. 1989.**

Cross-References

Observance of right to keep and bear arms, 1-1-224.

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

History: **En. Sec. 1, Ch. 87, L. 1969; Sec. 94-3578.1, R.C.M. 1947; redes. 94-8-219 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-219.**

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

History: **En. Sec. 2, Ch. 87, L. 1969; Sec. 94-3578.2, R.C.M. 1947; redes. 94-8-220 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-220.**

45-8-343. Firing firearms. (1) Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding $25 or such greater fine or a term of imprisonment, or both, as the town or city may impose.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1.

History: **En. Secs. 1, 2, p. 46, Ex. L. 1873; re-en. Sec. 185, 4th Div. Rev. Stat. 1879; re-en. Sec. 228, 4th Div. Comp. Stat. 1887; amd. Sec. 1161, Pen. C. 1895; re-en. Sec. 8834, Rev. C. 1907; re-en. Sec. 11530, R.C.M. 1921; re-en. Sec. 11530, R.C.M. 1935; Sec. 94-3578, R.C.M. 1947; redes. 94-8-218 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 39, Ch. 359, L. 1977; R.C.M. 1947, 94-8-218; amd. Sec. 1, Ch. 20, L. 1981; amd. Sec. 1, Ch. 618, L. 1983.**

Cross-References

Excessive fines and cruel and unusual punishments prohibited, Art. II, sec. 22, Mont. Const.

Local government with self-government powers — limit on fixing misdemeanor penalty, 7-1-111(8).

Disorderly conduct, 45-8-101.

45-8-344. Use of firearms by children under fourteen prohibited — exceptions. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor or an adult who has been authorized by the parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R.C.M. 1921; re-en. Sec. 11565, R.C.M. 1935; Sec. 94-3579, R.C.M. 1947; amd. Sec. 1, Ch. 139, L. 1963; redes. 94-8-221 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 40, Ch. 359, L. 1977; R.C.M. 1947, 94-8-221; amd. Sec. 1, Ch. 600, L. 1993.

Cross-References

Criminal liability of parent or guardian — prosecution, 45-8-345.

Safety instruction for resident hunters under 18 years of age, 87-2-105.

45-8-345. Criminal liability of parent or guardian — prosecution. (1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

History: En. Sec. 2, Ch. 111, L. 1907; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, R.C.M. 1921; re-en. Sec. 11566, R.C.M. 1935; Sec. 94-3580, R.C.M. 1947; redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-222.

Cross-References

When accountability exists, 45-2-302.

When no penalty is specified, 46-18-212.

45-8-346 through 45-8-350 reserved.

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

History: En. Sec. 1, Ch. 589, L. 1985; amd. Sec. 11, Ch. 759, L. 1991.

Cross-References

Observance of right to keep and bear arms, 1-1-224.

45-8-352 through 45-8-359 reserved.

45-8-360. Establishment of individual licensure. In consideration that the right to keep and bear arms is protected and reserved to the people in Article II, section 12, of the Montana constitution, a person who has not been convicted of a violent, felony crime and who is lawfully able to own or to possess a firearm under the Montana constitution is considered to be individually licensed and verified by the state of Montana within the meaning of the provisions regarding individual licensure and verification in the federal Gun-Free School Zones Act of 1990.

History: En. Sec. 1, Ch. 317, L. 1995.

CHAPTER 9

DANGEROUS DRUGS

Part 1 — Offenses Involving Dangerous Drugs

45-9-101. Criminal sale of dangerous drugs.
45-9-102. Criminal possession of dangerous drugs.
45-9-103. Criminal possession with intent to sell.
45-9-104. Fraudulently obtaining dangerous drugs.
45-9-105. Altering labels on dangerous drugs.
45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
45-9-107. Criminal possession of precursors to dangerous drugs.
45-9-108. Exemptions.
45-9-109. Criminal sale of dangerous drugs on or near school property — penalty — affirmative defense.
45-9-110. Criminal production or manufacture of dangerous drugs.
45-9-111. Imitation dangerous drugs — definitions.
45-9-112. Criminal sale of imitation dangerous drug — penalty.
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45-9-114. Criminal advertisement of imitation dangerous drug — penalty.
45-9-115. Criminal manufacture of imitation dangerous drug — penalty.
45-9-116. Imitation dangerous drugs — exemptions — rules.
45-9-117 through 45-9-120 reserved.
45-9-121. Criminal possession of toxic substances — penalty.
45-9-122 through 45-9-124 reserved.
45-9-125. Continuing criminal enterprise — penalty.
45-9-126 reserved.
45-9-127. Carrying dangerous drugs on train — penalty.
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45-9-130. Mandatory fine for possession and storage of dangerous drugs — disposition of proceeds.

Part 2 — Procedural Provisions

45-9-201. Repealed.
45-9-202. Alternative sentencing authority.
45-9-203. Surrender of license.
45-9-204. Immunity from liability.
45-9-205. Exemption from mandatory minimum sentences.

45-9-206. Use or possession of property subject to criminal forfeiture — property subject to criminal forfeiture.
45-9-207 reserved.
45-9-208. Mandatory dangerous drug information course.

Chapter Cross-References

Controlled substances, Title 50, ch. 32.

Part 1

Offenses Involving Dangerous Drugs

Part Cross-References

Controlled substances, Title 50, ch. 32.

45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if the person sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of sale and who is convicted of criminal sale of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: **En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974; amd. Sec. 1, Ch. 359, L. 1977; amd. Sec. 1, Ch. 584, L. 1977; R.C.M. 1947, 54-132; amd. Sec. 1, Ch. 587, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 583, L. 1981; amd. Sec. 1, Ch. 393, L. 1983; amd. Sec. 16, Ch. 3, L. 1985; amd. Sec. 1, Ch. 478, L. 1987; amd. Sec. 1, Ch. 575, L. 1989; amd. Sec. 3, Ch. 448, L. 1993.**

Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

Offense defined, 45-2-101.

Limitation on deferral or suspension of sentence, 46-18-201.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(6) A person of the age of 21 years or under convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(7) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: **En. Sec. 5, Ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974; amd. Sec. 2, Ch. 359, L. 1977; amd. Sec. 2, Ch.**

584, L. 1977; R.C.M. 1947, 54-133; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 612, L. 1983; amd. Sec. 17, Ch. 3, L. 1985; amd. Sec. 1, Ch. 42, L. 1991.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Possession defined, 45-2-101.

Alternative sentencing authority, 45-9-202.

Limitation on deferral or suspension of sentence, 46-18-201.

Dismissal after deferred imposition of sentence, 46-18-204.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section.

History: En. 54-133.1 by Sec. 1, Ch. 545, L. 1975; amd. Sec. 3, Ch. 584, L. 1977; R.C.M. 1947, 54-133.1; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 18, Ch. 3, L. 1985; amd. Sec. 1, Ch. 162, L. 1987.

Cross-References

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Possession defined, 45-2-101.

Limitation on deferral or suspension of sentence, 46-18-201.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969; amd. Sec. 3, Ch. 359, L. 1977; R.C.M. 1947, 54-134.

Cross-References

Obtain defined, 45-2-101.

Offense defined, 45-2-101.

Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs, 45-9-106.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101.

History: En. Sec. 7, Ch. 314, L. 1969; amd. Sec. 4, Ch. 359, L. 1977; R.C.M. 1947, 54-135.

Cross-References

Offense defined, 45-2-101.

Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs, 45-9-106.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon his first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years or fined an amount not to exceed $50,000, or both;

(b) upon his second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years or fined an amount not to exceed $50,000, or both.

History: En. Sec. 8, Ch. 314, L. 1969; R.C.M. 1947, 54-136; amd. Sec. 1, Ch. 389, L. 1981; amd. Sec. 1, Ch. 179, L. 1991.

Cross-References

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

45-9-107. Criminal possession of precursors to dangerous drugs. (1) A person commits the offense of criminal possession of precursors to dangerous drugs if he possesses:

(a) phenyl-2-propanone (phenylacetone) with the intent to manufacture amphetamine or methamphetamine, or both;

(b) both piperidine and cyclohexanone at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP).

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed $50,000, or both.

History: En. Sec. 1, Ch. 291, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 202, L. 1989.

Cross-References

Possession defined, 45-2-101.

Exemptions, 45-9-108.

Dangerous drug defined, 50-32-101.

45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacy to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research which is authorized by the college or university.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose.

History: En. Secs. 2, 3, Ch. 291, L. 1979; amd. Sec. 171, Ch. 575, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Criminal possession of precursors to dangerous drugs, 45-9-107.

45-9-109. Criminal sale of dangerous drugs on or near school property — penalty — affirmative defense. (1) A person commits the offense of criminal sale of dangerous drugs on or near school property if he violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

(2) Except as provided in 46-18-222, a person convicted of criminal sale of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life; and

(b) may be fined an amount of not more than $50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

History: En. Sec. 1, Ch. 519, L. 1991.

45-9-110. Criminal production or manufacture of dangerous drugs. (1) A person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for

criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than $50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than $100,000.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined in 50-32-101, are exempt from this section.

History: En. Sec. 1, Ch. 448, L. 1993.

45-9-111. Imitation dangerous drugs — definitions. As used in 45-9-111 through 45-9-116 and 45-9-202, the following definitions apply:

(1) "Dangerous drug" has the meaning given to that term in 50-32-101.

(2) "Imitation dangerous drug" means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which, including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation.

History: En. Sec. 1, Ch. 451, L. 1983; amd. Sec. 19, Ch. 3, L. 1985.

45-9-112. Criminal sale of imitation dangerous drug — penalty. (1) A person commits the offense of criminal sale of an imitation dangerous drug if he knowingly or purposely sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

(2) A person convicted of criminal sale of an imitation dangerous drug to a person 18 years of age or older shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person convicted of criminal sale of an imitation dangerous drug to a person under the age of 18 shall be imprisoned in the state prison for a term of not more than 10 years and may be fined not more than $50,000.

History: En. Sec. 2, Ch. 451, L. 1983.

45-9-113. Criminal possession of imitation dangerous drug with purpose to sell — penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug with purpose to sell if he possesses with purpose to sell any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug with purpose to sell shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person under 18 years of age convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

History: En. Sec. 3, Ch. 451, L. 1983.

45-9-114. Criminal advertisement of imitation dangerous drug — penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if he knowingly or purposely places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 451, L. 1983.

45-9-115. Criminal manufacture of imitation dangerous drug — penalty. (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if he knowingly or purposely manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 451, L. 1983.

45-9-116. Imitation dangerous drugs — exemptions — rules. (1) Sections 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

History: En. Sec. 6, Ch. 451, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 20, Ch. 3, L. 1985.

45-9-117 through 45-9-120 reserved.

45-9-121. Criminal possession of toxic substances — penalty. (1) A person commits the offense of criminal possession of a toxic substance if he inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering his mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed $500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age.

History: En. Sec. 1, Ch. 482, L. 1983.

45-9-122 through 45-9-124 reserved.

45-9-125. Continuing criminal enterprise — penalty. (1) A person who engages in a continuing criminal enterprise is guilty of a crime and upon conviction is punishable by a term of imprisonment and a fine not exceeding two times those authorized for the underlying offense. For purposes of this subsection, a person is engaged in a continuing criminal enterprise if:

(a) the person violates any provision of this chapter that is a felony; and

(b) the violation is a part of a continuing series of two or more violations of this chapter on separate occasions:

(i) that are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management; and

(ii) from which the person obtained substantial income or resources.

(2) A person who violates the provisions of subsection (1) after a previous judgment of conviction under that subsection has become final is punishable by a term of imprisonment not exceeding three times that authorized for the underlying offense.

(3) A sentence for a conviction under this section runs consecutively with the conviction for the underlying offense. Mandatory minimum sentences must be multiplied as provided in this section and may not be waived or suspended.

History: En. Sec. 1, Ch. 113, L. 1991.

45-9-126 reserved.

45-9-127. Carrying dangerous drugs on train — penalty. (1) A person commits the offense of carrying dangerous drugs on a train in this state if he is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

(2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102.

History: En. Secs. 2, 3, Ch. 601, L. 1991.

45-9-128 and 45-9-129 reserved.

45-9-130. Mandatory fine for possession and storage of dangerous drugs — disposition of proceeds. (1) In addition to the punishments and fines set forth in this part, the court shall fine each person found to have possessed or stored dangerous drugs 35% of the market value of the drugs as determined by the court.

(2) The fines collected pursuant to subsection (1) during each calendar year must be transmitted by the clerk of court to the state treasurer no later than 10 days following the end of the calendar year. The state treasurer shall deposit the fines in the state general fund.

History: En. Sec. 1, Ch. 446, L. 1995.

Compiler's Comments

Effective Date — Applicability: Section 5, Ch. 446, L. 1995, provided: "[This act] [45-9-130] is effective January 1, 1996, and applies to all persons found to have possessed or stored dangerous drugs after December 31, 1995."

Part 2

Procedural Provisions

45-9-201. Repealed. Sec. 3, Ch. 612, L. 1983.

History: En. Sec. 10, Ch. 314, L. 1969; amd. Sec. 6, Ch. 359, L. 1977; R.C.M. 1947, 54-138.

45-9-202. Alternative sentencing authority. (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or $1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of corrections based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in supervised job searches and community service work designated by the probation officer;

(ii) pay probation supervision fees through the clerk of the district court of not less than $50 per month to be deposited in an account in the state special revenue fund to the credit of the department of corrections;

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years.

History: En. Sec. 9, Ch. 314, L. 1969; amd. Sec. 5, Ch. 359, L. 1977; R.C.M. 1947, 54-137; amd. Sec. 7, Ch. 451, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 802, L. 1991; amd. Sec. 202, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2)(c) and (2)(d)(ii) substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Cross-References

Criminal possession of dangerous drugs, 45-9-102.

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

Criminal sale, or possession with purpose to sell, of imitation dangerous drug, 45-9-112, 45-9-113.

45-9-203. Surrender of license. If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

History: En. Sec. 2, Ch. 802, L. 1991.

Cross-References

Alternative sentencing authority, 45-9-202.

45-9-204. Immunity from liability. (1) Except as provided in subsections (2) and (3), if a court imposes mandatory service under 45-9-202(2)(c) or community service under 45-9-202(2)(d), a public or private agency supervising the service, treatment, or education program in which the defendant is participating and the officers, agents, and employees of the public or private agency are immune from liability to the defendant for any acts or omissions alleged to have occurred within the course and scope of supervision.

(2) The immunity provided in subsection (1) does not extend to acts or omissions alleged to constitute gross negligence or intentional acts.

(3) The immunity provided in subsection (1) for a public agency does not extend to claims for workers' compensation benefits when the defendant is injured while performing community service.

History: En. Sec. 3, Ch. 802, L. 1991.

Cross-References

Alternative sentencing authority, 45-9-202.

45-9-205. Exemption from mandatory minimum sentences. If a court imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in 46-18-201(5) do not apply.

History: En. Sec. 4, Ch. 802, L. 1991; amd. Sec. 4, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 substituted "46-18-201(5)" for "46-18-201(4)".

Cross-References

Alternative sentencing authority, 45-9-202.

45-9-206. Use or possession of property subject to criminal forfeiture — property subject to criminal forfeiture. (1) A person commits the offense of use or possession of property subject to criminal forfeiture if the person knowingly possesses, owns, uses, or attempts to use property that is subject to criminal forfeiture under this section. A person convicted of the offense of use or possession of property subject to criminal forfeiture shall be imprisoned in the state prison for a term not to exceed 10 years. Upon conviction, the property subject to criminal forfeiture is forfeited to the state and must be disposed of in accordance with the provisions of 44-12-205 and 44-12-206.

(2) The following property is subject to criminal forfeiture under this section:

(a) money, raw materials, products, equipment, and other property of any kind that is used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(b) property used or intended for use as a container for property enumerated in subsection (2)(a);

(c) except as provided in subsection (3), a conveyance, including an aircraft, vehicle, or vessel, used or intended for use to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(d) books, records, research products and materials, formulas, microfilm, tapes, and data used or intended for use in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(e) (i) everything of value furnished or intended to be furnished in exchange for a dangerous drug in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(ii) all proceeds traceable to such an exchange;

(f) money, negotiable instruments, securities, and weapons used or intended to be used to facilitate a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110;

(g) personal property constituting or derived from proceeds obtained directly or indirectly from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110; and

(h) real property, including any right, title, and interest in a lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner to facilitate a violation of or that is derived from or maintained by proceeds resulting from a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110. An owner's interest in real property is not subject to criminal forfeiture by reason of an act or omission unless it is proved that the act or omission was the owner's or was with the owner's express consent.

(3) A conveyance is not subject to criminal forfeiture under this section unless the owner or other person in charge of the conveyance knowingly used the conveyance to violate or knowingly consented to its use for the purpose of violating 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

(4) Criminal forfeiture under this section of property that is encumbered by a bona fide security interest is subject to that interest if the secured party did not use or consent to the use of the property in connection with a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110.

(5) Property subject to criminal forfeiture under this section may be seized under the following circumstances:

(a) A peace officer who has probable cause to make an arrest for a violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy was a violation of 45-9-101, 45-9-103, or 45-9-110 may seize a conveyance obtained with proceeds of the violation or used to facilitate the violation and shall immediately deliver the conveyance to the peace officer's law enforcement agency, to be held as evidence until a criminal forfeiture is declared or release ordered.

(b) Property subject to criminal forfeiture under this section may be seized by a peace officer under a search warrant issued by a court having jurisdiction over the property.

(c) Seizure without a warrant may be made if:

(i) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(ii) the property was the subject of a prior judgment in favor of the state in a criminal proceeding or a criminal forfeiture proceeding based on this section or on Title 44, chapter 12;

(iii) a peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(iv) a peace officer has probable cause to believe that the property was used or is intended to be used in violation of 45-9-101, 45-9-103, or 45-9-110 or of 45-4-102 when the object of the conspiracy is a violation of 45-9-101, 45-9-103, or 45-9-110.

(6) As used in this section, "dangerous drug" means a substance designated as a dangerous drug under Title 50, chapter 32, parts 1 and 2.

(7) A prosecution under subsection (1) must be commenced within 45 days of the seizure of the property involved.

History: En. Sec. 1, Ch. 537, L. 1995.

Compiler's Comments

Effective Date: Section 3, Ch. 537, L. 1995, provided: "[This act] is effective on passage and approval." Approved April 21, 1995.

45-9-207 reserved.

45-9-208. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of corrections under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a certified chemical dependency counselor working with the person recommends treatment.

History: En. Sec. 1, Ch. 50, L. 1995.

Compiler's Comments

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

CHAPTER 10

MODEL DRUG PARAPHERNALIA ACT

Part 1 — General Provisions

45-10-101. Definitions.
45-10-102. Determination of what constitutes paraphernalia.
45-10-103. Criminal possession of drug paraphernalia.
45-10-104. Manufacture or delivery of drug paraphernalia.
45-10-105. Delivery of drug paraphernalia to a minor.
45-10-106. Advertisement of drug paraphernalia.
45-10-107. Exemptions.
45-10-108. Mandatory dangerous drug information course.

Part 1

General Provisions

Part Cross-References

Destruction or appropriation of physical evidence in criminal cases, 46-5-306 through 46-5-309.

45-10-101. Definitions. (1) As used in this part, the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived;

(b) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(c) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug;

(d) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs;

(e) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

(f) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;

(g) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(h) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs;

(i) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs;

(j) containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs;

(k) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other dangerous drug as defined by 50-32-101 into the human body, such as:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) miniature cocaine spoons and cocaine vials;

(vii) chamber pipes;

(viii) carburetor pipes;

(ix) electric pipes;

(x) air-driven pipes;

(xi) chillums;
(xii) bongs;
(xiii) ice pipes or chillers.

(2) Words or phrases used in this part that are not defined by this section have the meaning given to them by the definitions contained in 50-32-101 unless the usage clearly indicates a different intent.

History: **En. Sec. 1, Ch. 481, L. 1981.**

45-10-102. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object, in time and space, to a direct violation of this part;

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of 45-10-103 through 45-10-106. The innocence of an owner or of anyone in control of the object as to a direct violation of 45-10-103 through 45-10-106 does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict ts use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to he total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

(14) expert testimony concerning its use.

History: **En. Sec. 2, Ch. 481, L. 1981.**

45-10-103. Criminal possession of drug paraphernalia. It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, nject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: En. Sec. 3, Ch. 481, L. 1981.

45-10-104. Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: En. Sec. 4, Ch. 481, L. 1981.

45-10-105. Delivery of drug paraphernalia to a minor. Any person 18 years of age or over who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than $1,000, or both.

History: En. Sec. 5, Ch. 481, L. 1981.

45-10-106. Advertisement of drug paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: En. Sec. 6, Ch. 481, L. 1981.

45-10-107. Exemptions. Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this part.

History: En. Sec. 7, Ch. 481, L. 1981.

45-10-108. Mandatory dangerous drug information course. A person who is convicted of an offense under this chapter and given a sentence that makes the offense a misdemeanor, as defined in 45-2-101, shall, in addition to any other sentence imposed, be sentenced to complete a dangerous drug information course offered by a chemical dependency facility approved by the department of corrections under 53-24-208. The sentencing judge may include in the sentencing order a condition that the person shall undergo chemical dependency treatment if a certified chemical dependency counselor working with the person recommends treatment.

History: En. Sec. 1, Ch. 50, L. 1995.

Compiler's Comments

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

TITLE 46

CRIMINAL PROCEDURE

Ch.
1. General Provisions.
2. Jurisdiction.
3. Venue.
4. Investigative Procedures.
5. Search and Seizure.
6. Arrest.
7. Initial Appearance of Arrested Person.
8. Right to Counsel.
9. Bail.
10. Preliminary Examination.
11. Commencement of Prosecution.
12. Arraignment of Defendant.
13. Pretrial Motions.
14. Mental Competency of Accused.
15. Production of Evidence.
16. Trial.
17. Lower Court Proceedings.
18. Sentence and Judgment.
19. Execution of Judgment.
20. Appeals.
21. Postconviction Hearing.
22. Habeas Corpus.
23. Probation, Parole, and Clemency.
24. Treatment of Victims and Witnesses.
    Chapters 25 through 29 reserved.
30. Uniform Criminal Extradition Act.
31. Interstate Agreement on Detainers.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Purpose and Application of Title

46-1-101. Repealed.
46-1-102. Repealed.
46-1-103. Scope — purpose — construction.

Part 2 — Definitions

46-1-201. Repealed.
46-1-202. Definitions.

Part 3 — Notice to Attorney General

6-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action.
6-1-302. Notice of appeal to be served on attorney general.

Chapter Cross-References

Publication of rules of criminal procedure, -11-204.

Courts and judicial officers, Title 3, ch. 1.

Court actions permitted on nonjudicial days, 3-1-302.

Subsequent applications for orders refused — contempt, 3-1-502, 3-1-503.

District Courts, Title 3, ch. 5.
Crimes, Title 45.

Part 1
Purpose and Application of Title

Part Cross-References

Administration of justice, Art. II, sec. 16, Mont. Const.

Due process, Art. II, sec. 17, Mont. Const.

Board of Crime Control, 2-15-2006, 44-4-301.

Types of actions — civil and criminal, 27-1-103.

Attorney General — criminal investigation, Title 44, ch. 2, part 1.

State system of criminal identification, Title 44, ch. 2, part 2.

Teletypewriter communications, Title 44, ch. 2, part 3.

Training coordinator for County Attorneys, Title 44, ch. 4, part 1.

Law Enforcement Academy, Title 44, ch. 10.

46-1-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 184, L. 1977; R.C.M. 1947, 95-101.

46-1-102. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-102.

46-1-103. Scope — purpose — construction. (1) This title governs the practice and procedure in all criminal proceedings in the courts of Montana except where provision for a different procedure is specifically provided by law.

(2) This title is intended to provide for the just determination of every criminal proceeding. The purposes of this title are to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

(3) Any irregularity in a proceeding specified by this title that does not affect the substantial rights of the accused must be disregarded.

History: En. Sec. 1, Ch. 800, L. 1991.

Part 2
Definitions

46-1-201. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-201, 95-203, 95-204, 95-205, 95-206, 95-207, 95-208, 95-209, 95-210, 95-211.

46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(2) "Arrest" means taking a person into custody in the manner authorized by law.

(3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(7) "Court" means a place where justice is judicially administered and includes the judge of the court.

(8) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(9) "Judge" means a person who is vested by law with the power to perform judicial functions.

(10) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(11) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(12) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(13) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(14) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(15) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

(16) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

(17) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(18) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(19) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(20) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

(21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(22) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(23) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(24) "Sentence" means the judicial disposition of a criminal proceeding upon a plea, verdict, or finding of guilty.

(25) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(26) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(27) “Superseded notes” means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(28) “Temporary road block” means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(29) “Witness” means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(30) “Work product” means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators.

History: En. Sec. 2, Ch. 800, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 262, L. 1993; amd. Sec. 203, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of parole, in two places, substituted “board of pardons and parole” for “board of pardons”; and in definitions of parole and probation substituted “department of corrections” for “department of corrections and human services”. Amendment effective July 1, 1995.

Part 3
Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: En. Sec. 1, Ch. 91, L. 1979.

46-1-302. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: En. Sec. 2, Ch. 91, L. 1979.

Cross-References

Initiation of criminal appeal by state, Title 6, ch. 20, part 2.

CHAPTER 2
JURISDICTION

Part 1 — Jurisdiction of the State

6-2-101. State criminal jurisdiction.

Part 2 — Jurisdiction of the Courts

6-2-201. Jurisdiction of the district court.
6-2-202. Jurisdiction of justices' courts.

46-2-203. Jurisdiction of city courts.
46-2-204. Jurisdiction of municipal courts.

Part 1
Jurisdiction of the State

Part Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1.

Criminal jurisdiction of the state — national forests, 2-1-210.

State criminal jurisdiction over Flathead Indians, 2-1-301.

State criminal jurisdiction over other tribes, 2-1-302, 2-1-303, 2-1-306.

Limits on local government jurisdiction, 7-1-111.

46-2-101. State criminal jurisdiction. (1) A person is subject to prosecution in this state for an offense which he commits while either within or outside the state by his own conduct or that of another for which he is legally accountable if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state and an act in furtherance of the offense occurs in the state; or

(c) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is an element of the offense or the result which is an element occurs within the state. In homicide, the "result" is either the physical contact which causes death or the death itself, and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(4) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

History: En. 95-304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-304.

Part 2
Jurisdiction of the Courts

Part Cross-References

Jurisdiction of District Courts and other courts, Art. VII, Mont. Const.

Jurisdiction of Justices' Courts, Art. VII, sec. 5, Mont. Const.

Means to carry jurisdiction into effect, 3-1-113.

District Court jurisdiction, 3-5-302.

Jurisdiction of Justices' Courts, 3-10-303.

Jurisdiction of City Court, 3-11-102, 3-11-103.

Jurisdiction of military courts, 10-1-403, 10-1-408.

Jurisdiction of District and Justices' Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of District and Justices' Courts — dentistry, 37-4-328.

Youth Court Act, Title 41, ch. 5.

Jurisdiction of Youth Court, 41-5-203.

Transfer from Youth Court to District Court, 41-5-206.

Determination of court's jurisdiction, 45-1-201.

District Court jurisdiction — official misconduct, 45-7-401.

District Court jurisdiction — supervision of milk industry, 81-23-405.

46-2-201. Jurisdiction of the district court. The district courts have jurisdiction of all public offenses not otherwise provided for.

History: En. 95-301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-301.

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; 3-5-302.

Jurisdiction of District Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of District Courts — dentistry, 37-4-328.

Transfer from Youth Court to District Court, 41-5-206.

District Court jurisdiction — official misconduct, 45-7-401.

District Court jurisdiction — supervision of milk industry, 81-23-405.

46-2-202. Jurisdiction of justices' courts. The justices' courts have criminal jurisdiction as authorized by 3-10-303.

History: En. 95-302.1 by Sec. 2, Ch. 184, L. 1977; R.C.M. 1947, 95-302.1.

Cross-References

Jurisdiction of Justices' Courts, Art. VII, sec. 5, Mont. Const.; 3-10-303.

Jurisdiction of Justices' Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of Justices' Courts — dentistry, 37-4-328.

Dangerous Drug Act, Title 45, ch. 9.

46-2-203. Jurisdiction of city courts. The city courts have criminal jurisdiction as authorized by 3-11-102 and 3-11-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(a).

Cross-References

Jurisdiction of City Courts, 3-11-102 through 3-11-104.

46-2-204. Jurisdiction of municipal courts. Municipal courts have criminal jurisdiction as authorized by 3-6-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(b).

CHAPTER 3

VENUE

Part 1 — General Provisions

46-3-101. Renumbered 46-3-111 by Code Commissioner, 1991.
46-3-102. Renumbered 46-3-112 by Code Commissioner, 1991.
46-3-103. Repealed.
46-3-104. Renumbered 46-3-113 by Code Commissioner, 1991.
46-3-105. Renumbered 46-3-114 by Code Commissioner, 1991.
46-3-106. Renumbered 46-3-115 by Code Commissioner, 1991.
46-3-107 through 46-3-109 reserved.
46-3-110. Filing the charge.
46-3-111. Place of trial.
46-3-112. Requisite act in multiple counties.
46-3-113. Assisting in commission of or committing an offense.
46-3-114. County of offense unknown.
46-3-115. Offense consummated within the state.

Part 2 — Venue for Certain Specific Crimes (Repealed. Sec. 263, Ch. 800, L. 1991)

Part 1
General Provisions

46-3-101. Renumbered 46-3-111 by Code Commissioner, 1991.

46-3-102. Renumbered 46-3-112 by Code Commissioner, 1991.

46-3-103. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-403.

46-3-104. Renumbered 46-3-113 by Code Commissioner, 1991.

46-3-105. Renumbered 46-3-114 by Code Commissioner, 1991.

46-3-106. Renumbered 46-3-115 by Code Commissioner, 1991.

46-3-107 through 46-3-109 reserved.

46-3-110. Filing the charge. (1) In all criminal prosecutions, the charge must be filed in the county where the offense was committed unless otherwise provided by law.

(2) A charge for violation of 45-7-306 after imposition of a state prison sentence or after commitment to the department of corrections may, at the discretion of the county attorney for the county in which the person was arrested and without objection from the person charged, be filed in any county in the state.

History: En. Sec. 3, Ch. 800, L. 1991; amd. Sec. 1, Ch. 177, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 177 inserted (2) allowing a charge under 45-7-306 to be filed, without defendant's objection, in any county in the state.

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

46-3-111. Place of trial. (1) The place of trial must be in the county where the charge is filed unless otherwise provided by law.

(2) All objections that a charge is filed in the improper county are waived by a defendant unless made before the first witness is sworn at the time of trial. If an objection is made, a hearing must be held and the proper county in which to file the charge must be established before further proceedings may take place.

History: En. 95-401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-401; amd. Sec. 4, Ch. 800, L. 1991; Sec. 46-3-101, MCA 1989; redes. 46-3-111 by Code Commissioner, 1991.

Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

46-3-112. Requisite act in multiple counties. (1) Except as provided in 46-3-110(2), if two or more acts are requisite to the commission of an offense or if two or more acts are committed in furtherance of a common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

(2) Except as provided in 46-3-110(2), if an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued.

History: En. 95-402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-402; amd. Sec. 1, Ch. 468, L. 1981; amd. Sec. 5, Ch. 800, L. 1991; Sec. 46-3-102, MCA 1989; redes. 46-3-112 by Code Commissioner, 1991; amd. Sec. 2, Ch. 177, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 177 in (1) and (2), at beginning, inserted exception clause; and made minor changes in style.

46-3-113. Assisting in commission of or committing an offense. Except as provided in 46-3-110(2), if a person in one county commits an offense or aids, abets, or procures the commission of an offense in another county, the charge may be filed in either county.

History: En. 95-404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-404; amd. Sec. 6, Ch. 800, L. 1991; Sec. 46-3-104, MCA 1989; redes. 46-3-113 by Code Commissioner, 1991; amd. Sec. 3, Ch. 177, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 177 at beginning inserted exception clause; and made minor changes in style.

Cross-References

When a person is legally accountable for the conduct of another, 45-2-302.

46-3-114. County of offense unknown. (1) Except as provided in 46-3-110(2), if the county in which the offense was committed cannot be readily determined, the offender may be charged in any county in which it appears that an element of the offense occurred.

(2) Except as provided in 46-3-110(2), if an offense is committed in or against a public or private conveyance and it is doubtful in which county the offense occurred, the charge may be filed in any county in or through which the conveyance has traveled.

History: En. 95-405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-405; amd. Sec. 7, Ch. 800, L. 1991; Sec. 46-3-105, MCA 1989; redes. 46-3-114 by Code Commissioner, 1991; amd. Sec. 4, Ch. 177, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 177 in (1) and (2), at beginning, inserted exception clause; and made minor changes in style.

46-3-115. Offense consummated within the state. Except as provided in 46-3-110(2), if an offense is committed partly within this state, the offense may be charged in any county where an act requisite to the commission of the offense is committed or continued.

History: En. 95-407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-407; amd. Sec. 8, Ch. 800, L. 1991; Sec. 46-3-106, MCA 1989; redes. 46-3-115 by Code Commissioner, 1991; amd. Sec. 5, Ch. 177, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 177 at beginning inserted exception clause; and made minor changes in style.

Part 2

Venue for Certain Specific Crimes (Repealed. Sec. 263, Ch. 800, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

46-3-201. En. 95-406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-406.

46-3-202. En. 95-408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 71, Ch. 359, L. 1977; R.C.M. 1947, 95-408.

46-3-203. En. 95-409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-409.

46-3-204. En. 95-410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-410.

46-3-205. En. 95-411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-411.

46-3-206. En. 95-412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-412.

CHAPTER 4

INVESTIGATIVE PROCEDURES

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46-4-101. Jurisdiction — death and cause of death in different counties.
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Part 3 — Investigative Subpoenas

46-4-301. Issuance of subpoena.
46-4-302. Penalty for failure to appear or obey.
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46-4-304. Conduct of investigative inquiry.
46-4-305. Self-incrimination — immunity.
46-4-306. Applicability of other laws — costs.

Chapter Cross-References

County Coroner, Title 7, ch. 4, part 29.

Witness fees — inquests, 26-2-503.

Part 1

Investigation of Death — Autopsy

46-4-101. Jurisdiction — death and cause of death in different counties. (1) The coroner of the county where a dead human body is found has jurisdiction if:

(a) the place of death is unknown;

(b) the dead human body was shipped into the county without proper permits; or

(c) the death occurred while the deceased was in transit in the state.

(2) When death occurs as a direct result of acts or events that occurred in another county, the coroner of the county where the acts or events causing

death occurred has jurisdiction. If a coroner that has jurisdiction of a death fails to act, the state medical examiner has jurisdiction.

(3) A county coroner has primary jurisdiction in the county in which he is appointed or elected to serve; however, a qualified coroner may serve in another county upon the request of the coroner or county attorney of that county. A coroner may travel to another county to inquire into a death pursuant to 46-4-122.

History: En. 95-812 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-812; amd. Sec. 13, Ch. 660, L. 1991.

46-4-102. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. 95-801 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 530, L. 1977; R.C.M. 1947, 95-801.

46-4-103. Autopsy — when conducted, scope. (1) If in the opinion of the coroner an autopsy is advisable, he shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general. In ordering an autopsy the coroner, county attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct an autopsy includes the right to retain specimens the medical examiner performing the autopsy considers necessary.

(3) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy, investigation, or inquiry is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for postmortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

History: En. 95-802 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 25, Ch. 530, L. 1977; R.C.M. 1947, 95-802; amd. Sec. 14, Ch. 660, L. 1991.

Cross-References

Records and findings — copies maintained by State Medical Examiner's office, 44-3-214.

46-4-104. Liability of mortuary or physician. A mortuary owner or person employed in a mortuary is not liable for the acts of the coroner performed in the removal of a body to a mortuary or during the course of an autopsy on that body. No criminal or civil action may arise against a licensed physician for performing an autopsy authorized by this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

History: En. 95-813 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-813; amd. Sec. 2, Ch. 492, L. 1985; amd. Sec. 12, Ch. 800, L. 1991.

Cross-References

Exemption from liability for autopsy, 44-3-401.

46-4-105 through 46-4-109 reserved.

46-4-110. Powers of coroner. In the performance of his duties under this chapter, the coroner may:

(1) pronounce the fact of death of any human being under circumstances in which he has a duty to inquire pursuant to 46-4-122;

(2) certify and amend death certificates as considered necessary in circumstances under which he has a duty to inquire pursuant to 46-4-122;

(3) issue subpoenas pursuant to 46-4-112;

(4) order autopsies as provided in 46-4-103;

(5) conduct examinations and tests as considered necessary to determine the cause, manner, and circumstances of death and identification of a dead human body as provided in 46-4-101 and 46-4-113;

(6) order a dead human body to be disinterred or removed from its place of disposition, with or without the consent of the next of kin, under circumstances in which he has a duty to inquire pursuant to 46-4-122;

(7) conduct inquests pursuant to 46-4-201; and

(8) order cessation of any activity by any person or agency, other than the law enforcement agency having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry or the collection of information or evidence needed for an inquiry.

History: En. Sec. 2, Ch. 660, L. 1991.

46-4-111. Coroner's authority to seize and preserve evidence. (1) A county coroner may enter any room, dwelling, building, or other place in which he has probable cause to believe that a dead human body or evidence of the circumstances of a death that requires investigation may be found. If refused entry, a coroner who is investigating a death pursuant to his authority may apply to a judge authorized to issue search warrants for a warrant to enter the premises and to search for and seize evidence of the cause of a death, including a dead human body.

(2) The application for a search warrant must:

(a) state facts sufficient to show probable cause that a human body or evidence of the circumstances of death is present in the place to be searched;

(b) particularly describe the place to be searched; and

(c) particularly describe the things to be seized.

(3) To preserve evidence of the cause of death, a coroner may:

(a) place under his custody and control any dwelling, building, item, vehicle, aircraft, railroad engine or train, vessel, enclosure, or open area for a period of not more than 10 days; and

(b) forbid entrance by an unauthorized person into any area specified in subsection (3)(a).

(4) A person may not enter an area that is restricted pursuant to subsection (3) without the permission of the coroner or the law enforcement agency having jurisdiction if there is also a criminal investigation in progress.

History: En. Sec. 1, Ch. 660, L. 1991.

46-4-112. Subpoenaing of witnesses and documents. (1) In an inquiry or inquest, a coroner may:

(a) issue subpoenas for witnesses as provided in 46-4-203; and

(b) issue subpoenas commanding the production of books, records, papers, documents, and other objects as may be necessary and proper to the inquiry or inquest.

(2) Any material subpoenaed pursuant to subsection (1)(b) is confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only in accordance with 44-5-303. However, any material produced at an inquest is public information.

(3) Disobedience of a subpoena issued under 46-4-203 or this section is punishable in the same manner as disobedience of a subpoena issued by a justice of the peace as provided in Title 3, chapter 10, part 4.

History: En. Sec. 7, Ch. 660, L. 1991.

46-4-113. Examinations and tests. The coroner may direct a properly qualified expert to conduct any test or examination that he reasonably believes is necessary to determine the cause, manner, and circumstances of a death or to identify a dead human body. The coroner may also require examination by the next of kin or any other person when necessary to identify a dead human body.

History: En. Sec. 8, Ch. 660, L. 1991.

46-4-114. Reporting fetal deaths. A licensed nurse, a midwife, a physician assistant-certified, an emergency medical technician, a birthing assistant, or any other person who assists in the delivery that occurs outside a licensed medical facility of a fetus that is believed or declared to be dead shall report the death by the earliest means available to the coroner of the county in which the death occurred.

History: En. Sec. 6, Ch. 660, L. 1991.

46-4-115 through 46-4-119 reserved.

46-4-120. Notification of finding human remains. A person who finds a dead human body or fetus or remains that appear to be human shall immediately report this fact to the county coroner by telephone or by the fastest available means of communication.

History: En. Sec. 1, Ch. 287, L. 1993.

Cross-References

Protection of human remains and burial sites, Title 22, ch. 3, part 8.

46-4-121. Inquiry defined. For the purposes of this part, an inquiry by a county coroner is an informal examination of a death and its attendant circumstances to determine whether:

(1) an inquest, which is a formal inquiry, should be held;

(2) the reporting physician should certify the death;

(3) any further action or examination should be made concerning a death; or

(4) there is anything unusual or remarkable about a death that may warrant further action by the county attorney or the law enforcement agency that has jurisdiction.

History: En. Sec. 3, Ch. 660, L. 1991.

46-4-122. Human deaths requiring inquiry by coroner. The coroner shall inquire into and determine the cause and manner of death and all circumstances surrounding a human death:

(1) that was caused or is suspected to have been caused:

(a) in any degree by an injury, either recent or remote in origin; or

(b) by the deceased or any other person that was the result of an act or omission, including but not limited to:

(i) a criminal or suspected criminal act;

(ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal death; or

(iii) an accidental death; or

(c) by an agent, disease, or medical condition that poses a threat to public health;

(2) whenever the death occurred:

(a) while the deceased was incarcerated in a prison or jail or confined to a correctional or detention facility owned and operated by the state or a political subdivision of the state;

(b) while the deceased was in the custody of, or was being taken into the custody of, a law enforcement agency or a peace officer;

(c) during or as a result of the deceased's employment;

(d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead upon arrival at a medical facility; or

(e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician at any time in the 30-day period prior to death;

(3) if the dead human body is to be cremated or shipped into the state and lacks proper medical certification or burial or transmit permits; or

(4) that occurred under suspicious circumstances.

History: En. Sec. 4, Ch. 660, L. 1991; amd. Sec. 2, Ch. 287, L. 1993.

46-4-123. Inquiry report. The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of 46-4-122. The report must be made in triplicate on a form provided by the division of forensic science of the department of justice. The coroner and the medical examiner shall each retain one copy and shall deliver the other copy to the county attorney. If the coroner orders an autopsy during the course of an inquiry, he shall also provide the medical examiner with a copy of the autopsy report. The forms must be completed and distributed as provided in this section as promptly as practicable.

History: En. Sec. 5, Ch. 660, L. 1991.

Part 2
Inquests

Part Cross-References

Jury of inquest defined, 3-15-105.

Jurors' fees, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries of inquest — summoning and impaneling, Title 3, ch. 15, part 8.

46-4-201. Inquest — definition, when held, how conducted. (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person and is conducted by the coroner before a coroner's jury.

(2) The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, if the death of any person occurs in a jail or penal institution, while a person is being taken into custody or is in the custody of a peace officer, or is caused by a peace officer, except where criminal charges have been or will be filed, the county attorney shall order the coroner to hold an inquest.

(3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest is to be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sec. 95-809, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-809; amd. Sec. 1, Ch. 343, L. 1983; amd. Sec. 15, Ch. 660, L. 1991.

Cross-References

Jury of inquest defined, 3-15-105.

46-4-202. Summoning and swearing in of jurors — instructions. (1) For holding an inquest, the coroner shall summon a jury of at least 6 but not more than 12 persons qualified by law to serve as jurors and selected at random from a list of eligible jurors that is furnished to the coroner annually by the county clerk of court.

(2) The jury selected by the coroner must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict on the death according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner shall instruct the jurors as to their duties.

History: (1)En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; (2)En. 95-804 by Sec. 1, Ch. 196, L. 1967; Sec. 95-804, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-804; amd. Sec. 2, Ch. 343, L. 1983; amd. Sec. 16, Ch. 660, L. 1991.

Cross-References

Jurors' fees, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries of inquest — summoning and impaneling, Title 3, ch. 15, part 8.

46-4-203. Coroner's subpoena. Upon the request of the county attorney, a coroner shall issue subpoenas for witnesses, returnable immediately or at a time and place the coroner may designate, that may be served by any competent person.

History: En. 95-805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-805; amd. Sec. 1, Ch. 116, L. 1979; amd. Sec. 15, Ch. 800, L. 1991.

Cross-References

Witnesses at inquests, 26-2-503.

46-4-204. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. 95-806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-806; amd. Sec. 3, Ch. 343, L. 1983.

46-4-205. Verdict of jury — form. The jury may view the body, and the county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies. After viewing the body and the death scene and hearing the testimony, the jury shall render its verdict, which must be by majority vote, and certify the same in writing signed by each juror. The verdict must set forth:

(1) who the deceased person is;

(2) when and where he came to his death;

(3) if he came to his death by criminal means; and

(4) if he was killed or his death was occasioned by the act of another by criminal means, who committed the act, if known. If the jury finds that the death was not by criminal means, that fact must be stated on the verdict form.

History: En. 95-807 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-807; amd. Sec. 17, Ch. 660, L. 1991.

46-4-206. Recording and filing of testimony and proceedings. Testimony before a coroner's jury must be given under oath. The testimony of the witnesses examined and proceedings before the coroner's jury must be recorded and transcribed by a competent stenographer appointed by the coroner. The record of the inquest and the verdict of the jury must be filed by the coroner in the office of the clerk of the district court of the county in which the inquest was held. The expenses of recording and transcribing must be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: En. 95-808 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-808; amd. Sec. 18, Ch. 660, L. 1991.

46-4-207. Coroner's register. The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, such description of the deceased as may be sufficient for identification.

History: En. 95-811 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-811.

Part 3

Investigative Subpoenas

Part Cross-References

Subpoenas, Title 26, ch. 2, part 1.

Subpoenas and witnesses, Title 46, ch. 15, part 1.

46-4-301. Issuance of subpoena. Whenever a prosecutor has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the prosecutor and give testimony and produce books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may be issued only when it appears upon the affidavit of the prosecutor that the administration of justice requires it to be issued.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(1); amd. Sec. 19, Ch. 800, L. 1991.

46-4-302. Penalty for failure to appear or obey. (1) A person who, without just cause, fails to obey a subpoena served under this part is punishable for contempt of court.

(2) (a) A person who, after being granted immunity under 46-4-305, refuses to give testimony or produce evidence under this part must be brought without unnecessary delay before the judge issuing the subpoena or, in that judge's absence or inability to act, before the nearest or most accessible judge, who shall inform the person:

(i) of the contents and requirements of the subpoena;

(ii) that the person has been granted immunity and may not be excused from testifying or producing evidence on the grounds that the testimony may incriminate the person; and

(iii) that a refusal to testify or produce evidence as commanded in the subpoena is punishable as a contempt of court under Title 3, chapter 1, part 5.

(b) In the presence of the judge, the person must be examined by the prosecutor or produce evidence as commanded in the subpoena.

(c) A refusal to testify or produce evidence may be punished as a contempt under Title 3, chapter 1, part 5.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(2); amd. Sec. 1, Ch. 157, L. 1987; amd. Sec. 20, Ch. 800, L. 1991.

46-4-303. Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(3); amd. Sec. 21, Ch. 800, L. 1991.

46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall appoint counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

History: En. 95-721 by Sec. 2, Ch. 486, L. 1977; R.C.M. 1947, 95-721; amd. Sec. 22, Ch. 800, L. 1991.

46-4-305. Self-incrimination — immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make a statement or to produce evidence that may be personally incriminating.

(2) The prosecutor may, with the approval of the judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution.

(3) Nothing in this part prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in the prosecutor's sole discretion, that the best interest of justice would be served by granting immunity.

(4) After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

History: En. 95-722 by Sec. 3, Ch. 486, L. 1977; R.C.M. 1947, 95-722; amd. Sec. 3, Ch. 577, L. 1983; amd. Sec. 23, Ch. 800, L. 1991.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

46-4-306. Applicability of other laws — costs. (1) The fees and mileage of witnesses subpoenaed pursuant to this part are the same as those required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney, and the appropriate city shall bear all costs, including the cost of service, when the application for the subpoena is made by a city attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-112, 46-15-113, and 46-15-120.

(3) Each investigative cost, including testing of evidence and persons, must be borne by the governmental entity whose action created the cost, unless another governmental entity agrees to or by law is required to bear the cost.

History: En. 95-723 by Sec. 4, Ch. 486, L. 1977; R.C.M. 1947, 95-723; amd. Sec. 259, Ch. 800, L. 1991; amd. Sec. 2, Ch. 262, L. 1993.

Cross-References

Witness fees, Title 26, ch. 2, part 5.

CHAPTER 5

SEARCH AND SEIZURE

Part 1 — Legality and Admissibility

46-5-101. Searches and seizures — when authorized.
46-5-102. Scope of search incident to arrest.
46-5-103. When search and seizure not illegal.
46-5-104. Repealed.

Part 2 — Search Warrants

46-5-201. Repealed.
46-5-202. Renumbered 46-5-221 by Code Commissioner, 1991.
46-5-203. Renumbered 46-5-224 by Code Commissioner, 1991.
46-5-204. Renumbered 46-5-310 by Code Commissioner, 1991.
46-5-205. Renumbered 46-5-226 by Code Commissioner, 1991.
46-5-206. Renumbered 46-5-227 by Code Commissioner, 1991.
46-5-207. Renumbered 46-5-225 by Code Commissioner, 1991.
46-5-208. Renumbered 46-5-228(1) by Code Commissioner, 1991.
46-5-209. Renumbered 46-5-228(2) by Code Commissioner, 1991.
46-5-210 and 46-5-211 reserved.
46-5-212. Pawnbroker to surrender stolen property — warrant.
46-5-213 through 46-5-219 reserved.
46-5-220. Authority to issue search warrant.
46-5-221. Grounds for search warrant.
46-5-222. Search warrants issued by telephone.
46-5-223. To whom search warrant directed.
46-5-224. What may be seized with search warrant.
46-5-225. When warrant may be served.
46-5-226. Service of search warrant.
46-5-227. Service and return of search warrant.
46-5-228. Procedures assisting in execution of service of search warrant.

Part 3 — Procedure in Regard to Property Seized

46-5-301. Return.
46-5-302. Repealed.
46-5-303. Renumbered 46-5-311 by Code Commissioner, 1991.
46-5-304. Renumbered 46-5-312 by Code Commissioner, 1991.
46-5-305. Disposition of unclaimed property.
46-5-306. Purpose.
46-5-307. Petition for destruction, disposal, or use of evidence.
46-5-308. Order.
46-5-309. Applicability of other statutes.
46-5-310. Filing of return.
46-5-311. Custody and disposition — seizure without search warrant.
46-5-312. Return of property seized — right to possess.

Part 4 — Stop and Frisk

46-5-401. Investigative stop.
46-5-402. Stop and frisk.
46-5-403. Duration of stop.

Part 5 — Roadblocks

46-5-501. Repealed.
46-5-502. Authority to establish roadblocks.
46-5-503. Repealed.
46-5-504. Repealed.

46-5-505. Repealed.
46-5-506 through 46-5-509 reserved.
46-5-510. Establishing roadblock.

Chapter Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.

Part 1
Legality and Admissibility

Part Cross-References

Search of student rooms at university, 20-25-513.

Powers of Game Wardens — search and arrest, 87-1-506.

46-5-101. Searches and seizures — when authorized. A search of a person, object, or place may be made and evidence, contraband, and persons may be seized in accordance with Title 46 when a search is made:

(1) by the authority of a search warrant; or

(2) in accordance with judicially recognized exceptions to the warrant requirement.

History: En. 95-701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-701; amd. Sec. 47, Ch. 800, L. 1991; amd. Sec. 3, Ch. 262, L. 1993.

Cross-References

Unreasonable searches and seizures prohibited, Art. II, sec. 11, Mont. Const.

46-5-102. Scope of search incident to arrest. When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

(1) protecting the officer from attack;

(2) preventing the person from escaping;

(3) discovering and seizing the fruits of the crime; or

(4) discovering and seizing any persons, instruments, articles, or things which may have been used in the commission of or which may constitute evidence of the offense.

History: En. 95-702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-702.

46-5-103. When search and seizure not illegal. (1) A search and seizure, whether with or without a warrant, may not be held to be illegal if:

(a) the defendant has disclaimed any right to or interest in the place or object searched or the evidence, contraband, or person seized;

(b) a right of the defendant has not been infringed by the search and seizure; or

(c) any irregularity in the proceedings has no effect on the substantial rights of the accused.

(2) Evidence, contraband, or persons lawfully seized are admissible as evidence in any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made.

History: En. 95-717 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-717; amd. Sec. 48, Ch. 800, L. 1991.

46-5-104. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-718 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-718.

Part 2
Search Warrants

46-5-201. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-703; amd. Sec. 2, Ch. 116, L. 1979.

46-5-202. Renumbered 46-5-221 by Code Commissioner, 1991.

46-5-203. Renumbered 46-5-224 by Code Commissioner, 1991.

46-5-204. Renumbered 46-5-310 by Code Commissioner, 1991.

46-5-205. Renumbered 46-5-226 by Code Commissioner, 1991.

46-5-206. Renumbered 46-5-227 by Code Commissioner, 1991.

46-5-207. Renumbered 46-5-225 by Code Commissioner, 1991.

46-5-208. Renumbered 46-5-228(1) by Code Commissioner, 1991.

46-5-209. Renumbered 46-5-228(2) by Code Commissioner, 1991.

46-5-210 and 46-5-211 reserved.

46-5-212. Pawnbroker to surrender stolen property — warrant. (1) When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to or purchased by the pawnbroker or dealer is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days upon issuance of an administrative warrant by a peace officer. Following expiration of the 30-day period, the pawnbroker or dealer shall surrender the property to the peace officer upon demand. The peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer. During the 30-day period, the pawnbroker or dealer may appeal the validity of the administrative warrant in justice's court or municipal court.

(2) As used in this section, "administrative warrant" means a warrant:

(a) issued by the chief law enforcement officer of the jurisdiction;

(b) that describes the property to be held; and

(c) that states that the pawnbroker shall hold the property for 30 days from the date of receipt.

History: En. Sec. 2, Ch. 470, L. 1989; amd. Sec. 1, Ch. 344, L. 1993; amd. Sec. 1, Ch. 310, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 310 at end of first sentence in (1) substituted "upon issuance of an administrative warrant by a peace officer" for "unless demanded by a peace officer", at beginning of second sentence inserted "Following expiration of the 30-day period", and inserted last sentence authorizing pawnbroker or dealer to appeal validity of warrant in Justice Court or Municipal Court during 30-day period; inserted (2) defining administrative warrant; and made minor changes in style.

Cross-References

Theft by disposal of stolen property, 45-6-314.

46-5-213 through 46-5-219 reserved.

46-5-220. Authority to issue search warrant. (1) A peace officer, the city or county attorney, or the attorney general may apply for a search warrant.

(2) A search warrant may be issued by:

(a) a city or municipal court judge or justice of the peace within the judge's geographical jurisdiction; or

(b) a district court judge within this state.

History: En. Sec. 49, Ch. 800, L. 1991.

46-5-221. Grounds for search warrant. A judge shall issue a search warrant to a person upon application, in writing or by telephone, made under oath or affirmation, that:

(1) states facts sufficient to support probable cause to believe that an offense has been committed;

(2) states facts sufficient to support probable cause to believe that evidence, contraband, or persons connected with the offense may be found;

(3) particularly describes the place, object, or persons to be searched; and

(4) particularly describes who or what is to be seized.

History: En. 95-704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 7, Ch. 184, L. 1977; R.C.M. 1947, 95-704; amd. Sec. 3, Ch. 116, L. 1979; amd. Sec. 1, Ch. 339, L. 1979; amd. Sec. 50, Ch. 800, L. 1991; Sec. 46-5-202, MCA 1989; redes. 46-5-221 by Code Commissioner, 1991.

Cross-References

Search warrants issuable for enforcement of liquor laws, 16-6-102.

Penalty for procuring search warrant by false swearing, 45-7-202.

46-5-222. Search warrants issued by telephone. (1) Whenever the application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-221, state reasons to justify immediate issuance of a search warrant.

(2) All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(3) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(4) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(5) Any search warrant issued by telephone must be signed by the issuing judge or the judge's successor as soon as possible after it has been issued.

History: En. Sec. 51, Ch. 800, L. 1991.

46-5-223. To whom search warrant directed. A search warrant must be directed to a specific peace officer commanding the officer to search for and seize the evidence, contraband, or person designated in the warrant.

History: En. Sec. 52, Ch. 800, L. 1991.

46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.

History: En. 95-705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-705; amd. Sec. 53, Ch. 800, L. 1991; Sec. 46-5-203, MCA 1989; redes. 46-5-224 by Code Commissioner, 1991.

46-5-225. When warrant may be served. The warrant may be served at any time of the day or night. The warrant must be served within 10 days from the time of issuance. Any warrant not served within 10 days is void and must be returned to the court or the judge issuing the warrant and identified as "not served".

History: En. 95-711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-711; amd. Sec. 59, Ch. 800, L. 1991; Sec. 46-5-207, MCA 1989; redes. 46-5-225 by Code Commissioner, 1991.

46-5-226. Service of search warrant. A search warrant must in all cases be served by the peace officer specifically named and by no other person except in aid of the officer when the officer is present and acting in its service.

History: En. 95-707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-707; amd. Sec. 54, Ch. 800, L. 1991; Sec. 46-5-205, MCA 1989; redes. 46-5-226 by Code Commissioner, 1991.

46-5-227. Service and return of search warrant. Service of a search warrant is made by exhibiting the original warrant or a duplicate original warrant at the place or to the person to be searched. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the search warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. Failure to leave a copy and receipt may not render the property seized inadmissible at trial.

History: En. 95-708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-708; amd. Sec. 55, Ch. 800, L. 1991; Sec. 46-5-206, MCA 1989; redes. 46-5-227 by Code Commissioner, 1991.

46-5-228. Procedures assisting in execution of service of search warrant. (1) All necessary and reasonable force may be used to serve a search warrant or to effect an entry into any building, property, or object to serve a search warrant.

(2) The person serving the search warrant may reasonably detain and search any person on the premises being searched at the time of the search:

(a) for self-protection; or

(b) to prevent the disposal or concealment of any evidence, contraband, or persons particularly described in the warrant.

History: (1)En. 95-709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-709; amd. Sec. 56, Ch. 800, L. 1991; Sec. 46-5-208, MCA 1989; redes. 46-5-228(1) by Code Commissioner, 1991; (2)En. 95-710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-710; amd. Sec. 57, Ch. 800, L. 1991; Sec. 46-5-209, MCA 1989; redes. 46-5-228(2) by Code Commissioner, 1991.

Part 3

Procedure in Regard to Property Seized

46-5-301. Return. (1) A return must be made promptly and must be accompanied by a written inventory of any evidence or contraband taken, verified by the person serving the warrant. The return must be made before the judge who issued the warrant or, if the judge is absent or unavailable, before the nearest available judge.

(2) The judge shall, upon request, deliver a copy of the inventory and the order of custody or disposition to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(3) The judge shall enter an order providing for the custody or appropriate disposition of the evidence or contraband seized pending further proceedings.

History: En. 95-712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-712; amd. Sec. 58, Ch. 800, L. 1991.

46-5-302. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-713.

46-5-303. Renumbered 46-5-311 by Code Commissioner, 1991.

46-5-304. Renumbered 46-5-312 by Code Commissioner, 1991.

46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized, it must be disposed of pursuant to the provisions of 46-5-306 through 46-5-309.

History: En. 95-716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-716; amd. Sec. 4, Ch. 116, L. 1979; amd. Sec. 5, Ch. 348, L. 1989.

Cross-References

Sale of attached property, Title 27, ch. 18, part 8.

46-5-306. Purpose. The purpose of 46-5-306 through 46-5-309 is to provide a procedure by which physical evidence in criminal cases may be destroyed or appropriated for law enforcement use when prosecutions have been completed and no further legal proceeding is contemplated or when it does not appear that criminal charges will be initiated.

History: En. Sec. 1, Ch. 348, L. 1989.

46-5-307. Petition for destruction, disposal, or use of evidence. (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309 means any property that is unlawful to produce or possess;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of such effort;

(g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and

(h) the petitioner's intentions relative to disposition of the items.

(2) If the petition requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

History: En. Sec. 2, Ch. 348, L. 1989.

46-5-308. Order. (1) The court may enter an order providing for the destruction or disposition of the evidence. A proposed order must be presented by the petitioner to the court and may include:

(a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time within which such destruction must be accomplished;

(b) if certain contraband is requested by the petitioner for training or law enforcement purposes, authorization to use the items and a description of each;

(c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain the items by the law enforcement agency and a description of the items;

(d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

(e) if the petition requests, authorization to sell noncontraband property at public sale or auction and deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

(f) authorization to destroy all items not otherwise provided for.

(2) The order must specify the time period in which destruction or sale must occur. Within 10 days following the destruction or sale, a return must be filed with the court, listing the property destroyed or sold and the date and method of disposition.

History: En. Sec. 3, Ch. 348, L. 1989.

Cross-References

Drug forfeiture funds — disposition, 44-12-206.

46-5-309. Applicability of other statutes. The provisions of Title 70, chapter 9, relating to the disposition of unclaimed or abandoned property, do not apply to actions filed pursuant to 46-5-306 through 46-5-309.

History: En. Sec. 4, Ch. 348, L. 1989.

46-5-310. Filing of return. (1) The application on which the warrant is issued must be retained by the judge but is not required to be filed with the clerk of the court or with the court, if there is no clerk, until the warrant has been served or has been returned "not served".

(2) The judge before whom the warrant is returned shall attach to the warrant a copy of the return, the inventory, and all other papers in connection with the warrant and shall file them with the issuing court.

History: En. 95-706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-706; amd. Sec. 60, Ch. 800, L. 1991; Sec. 46-5-204, MCA 1989; redes. 46-5-310 by Code Commissioner, 1991.

46-5-311. Custody and disposition — seizure without search warrant. (1) Evidence or contraband lawfully seized without a warrant may be retained in the custody of the officer making the seizure for a time sufficient to complete an investigation.

(2) Notice of the seizure and a receipt for the evidence or contraband seized must be given to the person from whose possession the evidence or contraband was taken and to the owner of the evidence or contraband if the owner is reasonably ascertainable. The failure to give a receipt may not render the evidence seized inadmissible at trial.

History: En. 95-714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-714; amd. Sec. 61, Ch. 800, L. 1991; Sec. 46-5-303, MCA 1989; redes. 46-5-311 by Code Commissioner, 1991.

Cross-References

Return of crime victim's property, 46-24-206.

46-5-312. Return of property seized — right to possess. (1) A person claiming the right to possession of property seized as evidence may apply to the judge for its return. The judge shall give written notice as the judge considers adequate to the prosecutor and all persons who have or may have an interest in the property and shall hold a hearing to determine the right to possession.

(2) If the right to possession is established, the judge shall order the property, other than contraband, returned if:

(a) the property is not needed as evidence;

(b) the property is needed and satisfactory arrangements can be made for its return for subsequent use as evidence; or

(c) all proceedings in which the property might be required have been completed.

History: En. 95-715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-715; amd. Sec. 62, Ch. 800, L. 1991; Sec. 46-5-304, MCA 1989; redes. 46-5-312 by Code Commissioner, 1991.

Part 4

Stop and Frisk

46-5-401. Investigative stop. In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(1) thru (3); amd. Sec. 42, Ch. 800, L. 1991.

46-5-402. Stop and frisk. A peace officer who has lawfully stopped a person under 46-5-401 or this section:

(1) may frisk the person and take other reasonably necessary steps for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;

(2) may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon;

(3) may demand the name and present address of the person; and

(4) shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that the officer is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation, the person will be released if not arrested.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(4) thru (7); amd. Sec. 43, Ch. 800, L. 1991.

46-5-403. Duration of stop. A stop authorized by 46-5-401 or 46-6-411 may not last longer than is necessary to effectuate the purpose of the stop.

History: En. Sec. 44, Ch. 800, L. 1991.

Part 5
Roadblocks

46-5-501. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(a).

46-5-502. Authority to establish roadblocks. Any law enforcement agency of this state is authorized to establish, within its jurisdiction, temporary roadblocks on the highways of this state for the purpose of apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state, identifying drivers, or checking for driver's licenses, vehicle registration, and insurance.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(b); amd. Sec. 45, Ch. 800, L. 1991.

46-5-503. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(c).

46-5-504. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(d).

46-5-505. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(e).

46-5-506 through 46-5-509 reserved.

46-5-510. Establishing roadblock. A written plan for establishing a roadblock must be designed by supervisory officers within the law enforcement agency to ensure motorist safety, minimize motorist inconvenience, and prevent the arbitrary selection of vehicles by providing a schedule for the selection of vehicles to be stopped.

History: En. Sec. 46, Ch. 800, L. 1991.

CHAPTER 6
ARREST

Part 1 — General Provisions

46-6-101. Repealed.
46-6-102. Persons exempt from arrest.
46-6-103. Repealed.
46-6-104. Method of arrest.
46-6-105. Time of making arrest.
46-6-106. Renumbered 46-6-312 by Code Commissioner, 1991.

Part 2 — Arrest With a Warrant

46-6-201. Issuance of arrest warrant upon complaint.
46-6-202. Renumbered 46-6-214 and 46-6-215 by Code Commissioner, 1991.
46-6-203. Renumbered 46-6-216 by Code Commissioner, 1991.
46-6-204. Minor irregularities in warrant.
46-6-205 through 46-6-209 reserved.
46-6-210. Arrest by peace officer.
46-6-211. Issuance of arrest warrant or summons.
46-6-212. Failure to appear following summons or notice to appear.
46-6-213. Form and content of summons.
46-6-214. Form and content of arrest warrant.
46-6-215. Execution of warrant.
46-6-216. Manner of arrest with warrant.

Part 3 — Warrantless Arrest and Notice to Appear

46-6-301. Repealed.
46-6-302. Renumbered 46-6-213 by Code Commissioner, 1991.
46-6-303. Renumbered 46-6-212(1) by Code Commissioner, 1991.
46-6-304. Renumbered 46-6-212(2) by Code Commissioner, 1991.
46-6-305 through 46-6-309 reserved.
46-6-310. Notice to appear.
46-6-311. Basis for arrest without warrant.
46-6-312. Manner of arrest without warrant.
46-6-313. Release.

Part 4 — Arrest by a Peace Officer

46-6-401. Renumbered 46-6-210 by Code Commissioner, 1991.
46-6-402. Assisting a peace officer.
46-6-403. Renumbered 46-6-313 by Code Commissioner, 1991.
46-6-404. Renumbered 46-6-310 by Code Commissioner, 1991.
46-6-405 through 46-6-410 reserved.
46-6-411. Assisting officer of another state.
46-6-412. Arrest by officer of the United States customs service or immigration and naturalization service.
46-6-413 through 46-6-420 reserved.
46-6-421. Renumbered 46-6-601 by Code Commissioner, 1991.
46-6-422. Renumbered 46-6-602 by Code Commissioner, 1991.

Part 5 — Arrest by a Private Person

46-6-501. Repealed.
46-6-502. Arrest by private person.
46-6-503. Repealed.
46-6-504. Repealed.
46-6-505. Custody by peace officer.
46-6-506. Temporary detention by merchant — liability.

Part 6 — Domestic Violence Provisions

46-6-601. Written report when no arrest made in domestic violence situation.
46-6-602. Notice of rights to victim in partner or family member assault.
46-6-603. Partner or family member assault — seizure of weapon.

Chapter Cross-References

Power of County Commission — rewards for felons, 7-32-2301.

Power of City or Town Council — arrests, 7-32-4301.

Escape from custody — use of force to prevent, 45-3-106.

Use of force in resisting arrest, 45-3-108.

Escape from custody — definition, 45-7-306.

Part 1
General Provisions

46-6-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-601.

46-6-102. Persons exempt from arrest. (1) Electors shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at election and in going to and returning from the same.

(2) Senators and representatives shall in all cases except felony or breach of the peace be privileged from arrest during the sessions of the state legislature and in going to and returning from the same.

(3) The militia shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at musters and election and in going to and returning from the same.

(4) Judges, attorneys, clerks, sheriffs, and other court officers shall be privileged from arrest while attending court and while going to and returning from court.

History: En. 95-616 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-616.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

Immunity of electors at polling places, Art. IV, sec. 6, Mont. Const.

Immunity of legislators from arrest, Art. V, sec. 8, Mont. Const.

Exemption from arrest and service of process, 46-15-120.

46-6-103. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-617 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-617.

46-6-104. Method of arrest. (1) An arrest is made by an actual restraint of the person to be arrested or by the person's submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested may not be subject to any greater restraint than is necessary to hold or detain that person.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

History: En. 95-602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-602; amd. Sec. 34, Ch. 800, L. 1991.

46-6-105. Time of making arrest. An arrest may be made at any time of the day or night, except that a person may not be arrested in the person's home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a judge endorsed upon an arrest warrant. However, a person may be arrested in the person's home or private dwelling at night if the person is being arrested pursuant to 46-6-311 for the offense of partner or family member assault.

History: En. 95-607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-607; amd. Sec. 4, Ch. 700, L. 1985; amd. Sec. 35, Ch. 800, L. 1991; amd. Sec. 13, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 at end substituted "partner or family member assault" for "domestic abuse".

Cross-References

Criminal offense of domestic abuse, 45-5-206.

46-6-106. Renumbered 46-6-312 by Code Commissioner, 1991.

Part 2
Arrest With a Warrant

Part Cross-References

Criminal process on United States land, Title 2, ch. 1, part 2; 2-1-307.

46-6-201. Issuance of arrest warrant upon complaint. If it appears from the contents of the complaint and the examination of the complainant and from the examination of other witnesses or affidavits, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. Upon the request of the prosecutor, the court shall issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(1) thru (3); amd. Sec. 4, Ch. 262, L. 1993.

Cross-References

Issuance of warrant upon failure to comply with conditions of bail, 46-9-505.

46-6-202. Renumbered 46-6-214 and 46-6-215 by Code Commissioner, 1991.

46-6-203. Renumbered 46-6-216 by Code Commissioner, 1991.

46-6-204. Minor irregularities in warrant. No warrant of arrest shall be dismissed nor shall any person in custody for an offense be discharged from such custody because of technical irregularities not affecting the substantial rights of the accused.

History: En. 95-605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-605.

46-6-205 through 46-6-209 reserved.

46-6-210. Arrest by peace officer. A peace officer may arrest a person when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds:

(1) that a warrant for the person's arrest has been issued in this state, except that unless otherwise provided by law, a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred; or

(2) that a felony warrant for the person's arrest has been issued in another jurisdiction.

History: En. 95-608 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-608; amd. Sec. 5, Ch. 700, L. 1985; amd. Sec. 28, Ch. 800, L. 1991; Sec. 46-6-401, MCA 1989; redes. 46-6-210 by Code Commissioner, 1991; amd. Sec. 5, Ch. 262, L. 1993.

Cross-References

Reserve and auxiliary officers, 7-32-201.

Criminal offense of domestic abuse, 45-5-206.

46-6-211. Issuance of arrest warrant or summons. (1) Upon the filing of a charge, the court may issue a summons or an arrest warrant as provided in 46-11-110 and 46-11-201. A summons may be issued to a corporation upon the filing of a charge against it. More than one warrant or summons may be issued on the same charge.

(2) A summons may be served personally or by first-class mail.

History: En. Sec. 29, Ch. 800, L. 1991.

46-6-212. Failure to appear following summons or notice to appear. (1) If, after the issuance of a summons or notice to appear, the judge becomes satisfied that the person has not appeared or will not appear as commanded, the judge may at once issue an arrest warrant.

(2) If after being summoned the corporation does not appear, a plea of not guilty must be entered in accordance with 46-12-204 and the matter must proceed to trial and judgment without further process.

History: (1)En. 95-613 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-613; amd. Sec. 26, Ch. 800, L. 1991; Sec. 46-6-303, MCA 1989; redes. 46-6-212(1) by Code Commissioner, 1991; (2)En. 95-615 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-615; amd. Sec. 27, Ch. 800, L. 1991; Sec. 46-6-304, MCA 1989; redes. 46-6-212(2) by Code Commissioner, 1991.

46-6-213. Form and content of summons. (1) When authorized to issue an arrest warrant, a court may instead issue a summons.

(2) A summons may be served personally or by first-class mail.

(3) The summons must:

(a) be in writing in the name of the state of Montana or in the name of the municipality if the violation of a municipal ordinance is charged;

(b) state the name of the person summoned and that person's address, if known;

(c) set forth the nature of the offense;

(d) state the date when issued and the municipality or county where issued;

(e) be signed by the judge of the court with the title of office noted; and

(f) command the person to appear before a court at a certain time and place.

(4) The summons must plainly state that, upon failure to appear following the service of summons, an arrest warrant must be issued immediately or, if the service is made to a corporation, that a plea of not guilty will be entered.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(b); amd. Sec. 25, Ch. 800, L. 1991; Sec. 46-6-302, MCA 1989; redes. 46-6-213 by Code Commissioner, 1991.

46-6-214. Form and content of arrest warrant. (1) An arrest warrant must:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before the nearest or most accessible court for an initial appearance;

(d) specify the name of the person to be arrested or, if that person's name is unknown, designate the person by any name or description by which the person can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of office noted.

(2) The arrest warrant may specify the amount of bail.

History: **En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(4) thru (6); amd. Sec. 30, Ch. 800, L. 1991; Sec. 46-6-202(1), (2), MCA 1989; redes. 46-6-214 by Code Commissioner, 1991.**

46-6-215. Execution of warrant. An arrest warrant may be directed to all peace officers in the state. It must be executed by a peace officer and may be executed in any county of the state. Arrest warrants issued for the violation of city ordinances may not be executed outside the city limits, except as otherwise provided by law.

History: **En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(4) thru (6); amd. Sec. 30, Ch. 800, L. 1991; Sec. 46-6-202(3), MCA 1989; redes. 46-6-215 by Code Commissioner, 1991.**

46-6-216. Manner of arrest with warrant. (1) When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, the intention to arrest that person, the cause of the arrest, and the fact that a warrant has been issued for that person's arrest, except:

(a) when the person flees or forcibly resists before the peace officer has an opportunity to inform the person; or

(b) when the giving of the information will imperil the arrest.

(2) The peace officer need not have possession of the warrant at the time of the arrest, but after the arrest, the warrant must be shown to the person arrested as soon as practicable if the person requests.

History: **En. 95-604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-604; amd. Sec. 5, Ch. 116, L. 1979; amd. Sec. 31, Ch. 800, L. 1991; Sec. 46-6-203, MCA 1989; redes. 46-6-216 by Code Commissioner, 1991.**

Part 3

Warrantless Arrest and Notice to Appear

46-6-301. Repealed. Sec. 263, Ch. 800, L. 1991.

History: **En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(a), (c).**

46-6-302. Renumbered 46-6-213 by Code Commissioner, 1991.

46-6-303. Renumbered 46-6-212(1) by Code Commissioner, 1991.

46-6-304. Renumbered 46-6-212(2) by Code Commissioner, 1991.

46-6-305 through 46-6-309 reserved.

46-6-310. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, the officer may instead issue the person a notice to appear.

(2) The notice must:

(a) be in writing;

(b) state the person's name and address, if known;

(c) set forth the nature of the offense;

(d) be signed by the issuing officer; and

(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or arrest warrant may be issued.

History: **En. 95-614 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-614; amd. Sec. 24, Ch. 800, L. 1991; Sec. 46-6-404, MCA 1989; redes. 46-6-310 by Code Commissioner, 1991.**

46-6-311. Basis for arrest without warrant. (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

History: En. Sec. 32, Ch. 800, L. 1991; amd. Sec. 3, Ch. 425, L. 1993; amd. Sec. 14, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 in (2), in second sentence, substituted "partner or family member assault" for "domestic abuse"; and made minor changes in style.

46-6-312. Manner of arrest without warrant. A peace officer making an arrest without a warrant shall inform the person to be arrested of the officer's authority, of the intention to arrest that person, and of the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission, after an escape, or when the giving of the information will imperil the arrest.

History: En. 95-606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-606; amd. Sec. 33, Ch. 800, L. 1991; Sec. 46-6-106, MCA 1989; redes. 46-6-312 by Code Commissioner, 1991; amd. Sec. 6, Ch. 262, L. 1993.

Cross-References

Arrest of accused without warrant, 46-30-301.

46-6-313. Release. When no warrant has been issued, a peace officer having custody of a person arrested may release the arrested person without requiring that person to appear before a court when the officer is satisfied that there are insufficient grounds to commence prosecution.

History: En. 95-610 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-610; amd. Sec. 37, Ch. 800, L. 1991; Sec. 46-6-403, MCA 1989; redes. 46-6-313 by Code Commissioner, 1991.

Part 4
Arrest by a Peace Officer

Part Cross-References

Duty of Police Chief to arrest, 7-32-4105.

Offenses for which patrol officers can make arrests, 44-1-1001.

Powers of Game Wardens — search and arrest, 87-1-506.

46-6-401. Renumbered 46-6-210 by Code Commissioner, 1991.

46-6-402. Assisting a peace officer. (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.

(2) A person commanded to aid a peace officer in making an arrest:

(a) has the same authority to arrest as that officer; and

(b) is not civilly liable for any reasonable conduct in aid of the officer.

History: En. 95-609 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 60, Ch. 535, L. 1975; R.C.M. 1947, 95-609; amd. Sec. 38, Ch. 800, L. 1991.

Cross-References

Failure to aid a peace officer, 45-7-304.

46-6-403. Renumbered 46-6-313 by Code Commissioner, 1991.

46-6-404. Renumbered 46-6-310 by Code Commissioner, 1991.

46-6-405 through 46-6-410 reserved.

46-6-411. Assisting officer of another state. (1) Any peace officer of another state, of the United States, or of the District of Columbia who enters this state in close pursuit of a person in order to arrest the person has the same authority to arrest and hold the person in custody as peace officers of this state have to arrest and hold in custody a person on the ground that the person has committed a crime in this state.

(2) If an arrest is made in this state by an officer of another state, of the United States, or of the District of Columbia, the officer shall without unnecessary delay take the arrested person before a judge of a court of record, who shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subsection (1) and not for the purpose of determining the guilt or innocence of the arrested person.

(3) If the judge determines that the arrest was in accordance with subsection (1), the judge shall commit the arrested person to the custody of the officer making the arrest, who shall without unnecessary delay take the arrested person to the state from which that person fled. If the judge determines that the arrest was unlawful, the judge shall discharge the person arrested.

(4) This section may not be construed to make unlawful any arrest in this state that would otherwise be lawful.

History: En. 95-619 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-619(part); amd. Sec. 39, Ch. 800, L. 1991.

46-6-412. Arrest by officer of the United States customs service or immigration and naturalization service. An officer of the United States customs service or immigration and naturalization service may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

(1) A person commits or attempts to commit an offense in the officer's presence.

(2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require his immediate arrest.

(3) The officer believes on reasonable grounds that a warrant for the person's arrest has been issued in this state.

(4) The officer believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction.

History: En. Sec. 1, Ch. 107, L. 1983.

Cross-References

Sovereignty and jurisdiction of the state, 2-1-102.

46-6-413 through 46-6-420 reserved.

46-6-421. Renumbered 46-6-601 by Code Commissioner, 1991.

46-6-422. Renumbered 46-6-602 by Code Commissioner, 1991.

Part 5
Arrest by a Private Person

46-6-501. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-611.1 by Sec. 1, Ch. 274, L. 1974; R.C.M. 1947, 95-611.1.

46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest.

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part); amd. Sec. 40, Ch. 800, L. 1991.

Cross-References

Limitation on arrest authority of auxiliary officer, 7-32-233.

46-6-503. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

46-6-504. Repealed. Sec. 1, Ch. 205, L. 1987.

History: En. 95-611.2 by Sec. 2, Ch. 274, L. 1974; R.C.M. 1947, 95-611.2.

46-6-505. Custody by peace officer. A peace officer who, pursuant to law, takes custody of a person arrested by a private citizen shall proceed in accordance with 46-6-104 and 46-6-312 and as otherwise provided by law.

History: En. Sec. 41, Ch. 800, L. 1991.

46-6-506. Temporary detention by merchant — liability. (1) A merchant, as defined in 30-11-301, who has reason to believe that a person has committed or is in the process of committing the offense of theft may stop and temporarily detain that person. The merchant:

(a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation, the person will be released or turned over to the custody of a peace officer;

(b) may demand the person's name and present or last address and question the person in a reasonable manner for the purpose of ascertaining whether or not the person is guilty of shoplifting;

(c) may take into possession any merchandise for which the purchase price has not been paid and that is in the possession of the person or has been concealed from full view; and

(d) may detain the person or request the person to remain on the premises until a peace officer arrives.

(2) A stop, detention, questioning, or recovery of merchandise under this section must be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, this section does not authorize a search of the detained person other than a search of the person's coat or other outer garments and any package, bag, or other container. After the purpose of a stop has been accomplished or 30 minutes have elapsed,

whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a peace officer.

(3) A merchant stopping, detaining, or arresting a person on the belief that the person is shoplifting is not liable for damages to the person unless the merchant acts in a manner contrary to this section.

(4) As used in this section, the following definitions apply:

(a) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment, with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct is prima facie evidence of concealment:

(i) concealing merchandise upon the person or in a container or otherwise removing merchandise from full view while upon the premises;

(ii) removing, changing, or altering a price tag;

(iii) transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale for by the merchant; or

(iv) abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise.

(b) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

History: En. Sec. 1, Ch. 180, L. 1993.

Part 6

Domestic Violence Provisions

46-6-601. Written report when no arrest made in domestic violence situation. When a peace officer is called to the scene of a reported incident of domestic violence but does not make an arrest, the peace officer shall file a written report with the officer commanding the law enforcement agency employing the peace officer, setting forth the reason or reasons for the decision.

History: En. Sec. 2, Ch. 700, L. 1985; amd. Sec. 36, Ch. 800, L. 1991; Sec. 46-6-421, MCA 1989; redes. 46-6-601 by Code Commissioner, 1991.

Cross-References

Criminal offense of domestic abuse, 45-5-206.

46-6-602. Notice of rights to victim in partner or family member assault. Whenever a peace officer arrests a person for partner or family member assault, as defined in 45-5-206, or responds to a call in which partner or family member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"The city or county attorney's office can file criminal charges against an offender if the offender committed the offense of partner or family member assault.

In addition to the criminal charges filed by the state of Montana, you are entitled to the following civil remedies:

You may go to court and file a petition requesting any of the following orders for relief:

(1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;

(2) an order of protection that directs the offender to leave your home and prohibits the offender from having any contact with you;

(3) an order of protection that prevents the offender from transferring any property except in the usual course of business;

(4) an order of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your worksite or other specified place;

(5) an order of protection that gives you possession of necessary personal property;

(6) an order of protection that prohibits the offender from possessing or using the firearm used in the assault.

If you file a petition in district court, the district court may order all of the above and may award custody of your minor children to you or to the other parent. The district court may order visitation of your children between the parents. The district court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

The forms that you need to obtain an order of protection are at ______________. You may call ____________ at ____________ for additional information about an order of protection.

You may file a petition in district court at ____________.

You may be eligible for restitution payments from the offender (the offender would repay you for costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a fund administered by the state of Montana for innocent victims of crime). You may call ____________ at ____________ for additional information about restitution or crime victims compensation.

The following agencies may be able to give you additional information or emergency help. (List telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary of services that are available.)"

History: En. Sec. 3, Ch. 700, L. 1985; Sec. 46-6-422, MCA 1989; redes. 46-6-602 by Code Commissioner, 1991; amd. Sec. 4, Ch. 425, L. 1993; amd. Sec. 15, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 near beginning of first sentence substituted "partner or amily member assault" for "domestic abuse", fter "45-5-206" substituted "or responds to a all in which partner or family member assault s suspected" for "if the victim is present", and fter "officer" inserted "outside the presence of he offender"; and substituted language to be ncluded in statement of victim's rights (see 995 Session Law for text) for former statement language that read: ""IF YOU ARE THE ICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody or a family member or partner, as defined in 45-5-206; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so.""

46-6-603. Partner or family member assault — seizure of weapon. (1) A peace officer who responds to a call relating to partner or family member assault shall seize the weapon used or threatened to be used in the alleged assault.

(2) The responding officer may, as appropriate:

(a) take reasonable action necessary to provide for the safety of a victim and any other member of the household;

(b) transport or arrange for the transportation of the victim and any other member of the household to a safe location; and

(c) assist a victim and any other member of the household to remove necessary personal items.

(3) A weapon seized under this section may not be returned to the offender until acquittal or until the return is ordered by the court.

History: En. Sec. 19, Ch. 350, L. 1995.

CHAPTER 7

INITIAL APPEARANCE OF ARRESTED PERSON

Part 1 — General Provisions

46-7-101. Appearance of arrested person — use of two-way electronic audio-video communication.
46-7-102. Duty of court.
46-7-103. Renumbered 46-10-105 by Code Commissioner, 1991.

Part 1

General Provisions

46-7-101. Appearance of arrested person — use of two-way electronic audio-video communication. (1) A person arrested, whether with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance.

(2) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing.

History: En. 95-901 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-901; amd. Sec. 1, Ch. 710, L. 1991; amd. Sec. 87, Ch. 800, L. 1991.

46-7-102. Duty of court. (1) The judge shall inform the defendant:

(a) of the charge or charges against the defendant;

(b) of the defendant's right to counsel;

(c) of the defendant's right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) of the general circumstances under which the defendant may obtain pretrial release;

(e) of the defendant's right to refuse to make a statement and the fact that any statement made by the defendant may be offered in evidence at the defendant's trial; and

(f) of the defendant's right to a judicial determination of whether probable cause exists if the charge is made by a complaint alleging the commission of a felony.

(2) The judge shall admit the defendant to bail as provided by law.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part); amd. Sec. 88, Ch. 800, L. 1991.

Cross-References

Bail, Art. II, sec. 21, Mont. Const.

Rights of accused, Art. II, sec. 24, Mont. Const.

Right to counsel, 46-8-101.

Bail provisions, Title 46, ch. 9.

Court to advise defendant of rights, 46-12-210.

Right to counsel — sentencing hearing, 46-18-223.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-7-103. Renumbered 46-10-105 by Code Commissioner, 1991.

CHAPTER 8

RIGHT TO COUNSEL

Part 1 — Extent of Right—Indigency Repayment of Costs

46-8-101. Right to counsel.
46-8-102. Waiver of counsel.
46-8-103. Duration of appointment.
46-8-104. Appointment after trial.
46-8-105 through 46-8-110 reserved.
46-8-111. Eligibility for court-appointed counsel — determination of indigence.
46-8-112. Repealed.
46-8-113. Payment for court-appointed counsel by defendant.
46-8-114. Time and method of payment.
46-8-115. Effect of nonpayment.

Part 2 — Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel.
46-8-202. Public defender's office.
46-8-203 through 46-8-209 reserved.
46-8-210. Short title.
46-8-211. Office of appellate defender — appellate defender — hiring — dismissal — staff.
46-8-212. Appellate defender — qualifications — duties.
46-8-213. Appellate defender — classification — salary — expenses.

Chapter Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Part 1
Extent of Right — Indigency Repayment of Costs

46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel, and must be asked if the aid of counsel is desired.

(2) If the defendant desires counsel, is unable to employ counsel, and is entitled to have counsel assigned, the court shall assign counsel to the defendant without unnecessary delay.

(3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if:

(a) the offense charged is a felony;

(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or

(c) the interests of justice would be served by assignment.

History: En. 95-1001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1001; amd. Sec. 1, Ch. 415, L. 1981; amd. Sec. 63, Ch. 800, L. 1991.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel — sentencing hearing, 46-18-223.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-8-102. Waiver of counsel. A defendant may waive the right to counsel when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently.

History: En. 95-1002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1002; amd. Sec. 2, Ch. 386, L. 1979; amd. Sec. 64, Ch. 800, L. 1991.

46-8-103. Duration of appointment. (1) When counsel has been assigned, the assignment is effective until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved by order of the court that assigned counsel or that has jurisdiction over the case.

(2) If counsel finds the defendant's case on appeal to be wholly frivolous, counsel shall advise the court of that fact and request permission to withdraw. The request to withdraw must be accompanied by a memorandum referring to anything in the record that might arguably support the appeal. The defendant is entitled to receive a copy of counsel's memorandum and to file a reply with the court.

History: En. 95-1003 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1003; amd. Sec. 65, Ch. 800, L. 1991.

46-8-104. Appointment after trial. Any court of record may assign counsel to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if he desires counsel and is unable to employ counsel.

History: En. 95-1004 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1004.

46-8-105 through 46-8-110 reserved.

46-8-111. Eligibility for court-appointed counsel — determination of indigence. (1) The court shall make a determination of indigence.

(2) In applying for court-appointed counsel, a defendant shall submit a sworn financial statement demonstrating financial inability to obtain legal representation without substantial hardship in providing for personal or family necessities. The statement is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false swearing.

History: En. Sec. 2, Ch. 415, L. 1981; amd. Sec. 1, Ch. 479, L. 1987; amd. Sec. 66, Ch. 800, L. 1991.

46-8-112. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. Sec. 3, Ch. 415, L. 1981.

46-8-113. Payment for court-appointed counsel by defendant. (1) The court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under the sentence imposed as provided in Title 46.

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding.

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 4, Ch. 415, L. 1981; amd. Sec. 67, Ch. 800, L. 1991; amd. Sec. 7, Ch. 262, L. 1993.

46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the clerk of the district court. The clerk of the district court shall distribute the payments to the government agency responsible for the expense of court-appointed counsel as provided for in 46-8-201.

History: En. Sec. 5, Ch. 415, L. 1981; amd. Sec. 1, Ch. 295, L. 1985; amd. Sec. 9, Ch. 680, L. 1985; amd. Sec. 68, Ch. 800, L. 1991.

46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment of the costs or of any installment, the court on motion of the prosecutor or on its own motion may require the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

(2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel must be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion of the costs in whole or in part.

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.

History: En. Sec. 6, Ch. 415, L. 1981; amd. Sec. 69, Ch. 800, L. 1991; amd. Sec. 8, Ch. 262, L. 1993.

Part 2

Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney must be paid for the services a sum as a judge or justice of the state supreme court certifies to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the state, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; or

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973; amd. Sec. 1, Ch. 15, L. 1974; amd. Sec. 9, Ch. 184, L. 1977; R.C.M. 1947, 95-1005; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 295, L. 1985; amd. Sec. 10, Ch. 680, L. 1985; amd. Sec. 8, Ch. 1, Sp. L. 1985; amd. Sec. 7, Ch. 704, L. 1991; amd. Sec. 70, Ch. 800, L. 1991; amd. Sec. 9, Ch. 262, L. 1993.

46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at state expense payable according to procedures established under

3-5-902(1) and, to the extent those costs are not paid by the state, at county expense in accordance with 3-5-901(3) and 3-5-902(1).

History: En. 95-1006 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1006; amd. Sec. 11, Ch. 680, L. 1985.

46-8-203 through 46-8-209 reserved.

46-8-210. Short title. Sections 46-8-210 through 46-8-213 may be cited as the "Appellate Defender Act".

History: En. Sec. 1, Ch. 781, L. 1991.

46-8-211. Office of appellate defender — appellate defender — hiring — dismissal — staff. (1) There is an office of appellate defender.

(2) The appellate defender must be hired by and shall serve at the pleasure of the appellate defender commission.

(3) The appellate defender shall hire and supervise the work of supporting personnel authorized by the commission.

History: En. Sec. 3, Ch. 781, L. 1991.

46-8-212. Appellate defender — qualifications — duties. (1) The appellate defender and any deputy or assistant appellate defender:

(a) must be an attorney licensed to practice law in this state;

(b) shall perform duties as may be provided by law or established by the appellate defender commission; and

(c) must have those qualifications otherwise required by the commission.

(2) The duties of the appellate defender are to:

(a) assume responsibility for appeals from district court and petitions for postconviction relief from proceedings in district court on behalf of indigent defendants only after conviction, as defined by 46-1-202, when:

(i) the defendant alleges that ineffective assistance of counsel resulted in conviction;

(ii) a district judge or the chief justice or an associate justice of the supreme court finds further representation by previously appointed counsel would not serve the interests of justice; or

(iii) the appellate defender agrees to assist in or assume responsibility for appeal;

(b) aid the commission in compiling and keeping current a statewide roster of attorneys eligible for appointment by an appropriate court as trial and appellate defense counsel for the indigent;

(c) keep a record of those services and expenses for the commission; and

(d) perform the duties otherwise established by the commission.

History: En. Sec. 4, Ch. 781, L. 1991.

46-8-213. Appellate defender — classification — salary — expenses. The appellate defender and staff must be classified according to the state classification pay plan and are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

History: En. Sec. 5, Ch. 781, L. 1991.

CHAPTER 9

BAIL

Part 1 — Definition and Availability of Bail

46-9-101. Repealed.
46-9-102. Bailable offenses.
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46-9-104. Bail on a new trial.
46-9-105. General authority for release and detention.
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46-9-201. Who may admit to bail.
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Part 3 — The Amount of Bail

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46-9-501. Renumbered 46-9-108 by Code Commissioner, 1991.
46-9-502. Conditions performed — bail discharged.
46-9-503. Violation of release condition — forfeiture.
46-9-504. Renumbered 46-9-512 by Code Commissioner, 1991.
46-9-505. Issuance of arrest warrant — redetermining bail.
46-9-506 through 46-9-509 reserved.
46-9-510. Surrender of defendant.
46-9-511. Forfeiture procedure.
46-9-512. Use of forfeited bail as restitution.

Chapter Cross-References
Bail, Art. II, sec. 21, Mont. Const.

Part 1
Definition and Availability of Bail

46-9-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1101 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1101; amd. Sec. 1, Ch. 692, L. 1985.

46-9-102. Bailable offenses. (1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged.

(2) On the hearing of an application for admission to bail made before or after indictment or information for a capital offense, the burden of showing that the proof is evident or the presumption great that the defendant is guilty of the offense is on the state.

History: En. 95-1108 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1108.

Cross-References
Bailable offenses, Art. II, sec. 21, Mont. Const.
Duty of judge to admit defendant to bail in accordance with law, 46-7-102.

46-9-103. Renumbered 46-9-107 by Code Commissioner, 1991.

46-9-104. Bail on a new trial. If the judgment of conviction is reversed and the cause remanded for a new trial, the trial court may order that the bail stand pending such trial or substitute, reduce, or increase bail.

History: En. 95-1119 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 12, Ch. 184, L. 1977; R.C.M. 1947, 95-1119.

46-9-105. General authority for release and detention. (1) An arrested person must be released or detained pending judicial proceedings pursuant to Title 46, chapter 9.

(2) If a person is released, that person shall appear to answer the charge for the alleged commission of the offense, as ordered, in the court having jurisdiction.

History: En. Sec. 71, Ch. 800, L. 1991.

46-9-106. Release or detention of defendant pending trial. Before a verdict has been rendered, the court shall:

(1) authorize the release of the defendant upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person; or

(2) detain the defendant when there is probable cause to believe that the defendant committed an offense for which death is a possible punishment and adequate safeguards are not available to ensure the defendant's appearance and the safety of the community.

History: En. Sec. 72, Ch. 800, L. 1991.

46-9-107. Release or detention pending appeal — revocation — sentencing hearing. A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's court or city court must be admitted to bail. The court shall order the detention of a defendant found guilty of an offense who is awaiting imposition or execution of sentence or a revocation hearing or who has filed an appeal unless the court finds that, if released, the defendant is not likely to flee or pose a danger to the safety of any person or the community.

History: En. 95-1109 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1109; amd. Sec. 1, Ch. 207, L. 1979; amd. Sec. 2, Ch. 692, L. 1985; amd. Sec. 73, Ch. 800, L. 1991; Sec. 46-9-103, MCA 1989; redes. 46-9-107 by Code Commissioner, 1991.

46-9-108. Conditions upon defendant's release — notice to victim of stalker's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of 45-5-220 is admitted to bail, the court shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release.

History: En. 95-1118 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 184, L. 1977; R.C.M. 1947, 95-1118; amd. Sec. 4, Ch. 692, L. 1985; amd. Sec. 74, Ch. 800, L. 1991; Sec. 46-9-501, MCA 1989; redes. 46-9-108 by Code Commissioner, 1991; amd. Sec. 3, Ch. 292, L. 1993.

46-9-109. Release or detention hearing. (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) In determining whether the defendant should be released or detained, the court shall take into account the available information concerning:

(a) the nature and circumstances of the offense charged, including whether the offense involved the use of force or violence;

(b) the weight of the evidence against the defendant;

(c) the history and characteristics of the defendant, including:

(i) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse, criminal history, and record concerning the appearance at court proceedings; and

(ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

(d) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and

(e) the property available as collateral for the defendant's release to determine if it will reasonably ensure the appearance of the defendant as required.

(3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is established in the appropriate amount or whether any other condition or restriction upon the defendant's release will reasonably ensure the appearance of the defendant and the safety of any person or the community.

History: En. Sec. 75, Ch. 800, L. 1991.

46-9-110. Release order. A release order issued by the court must include a written statement setting forth any restrictions or conditions upon the defendant's release.

History: En. Sec. 76, Ch. 800, L. 1991.

46-9-111. Release on own recognizance. Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required. Any person released as herein provided shall be fully apprised by the court of the penalty provided for failure to comply with the terms of his recognizance.

History: En. 95-1106 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1106.

46-9-112 through 46-9-114 reserved.

46-9-115. Release ordered by court where charge not pending. If release is ordered or bail is accepted by a court other than the court in which the charge is pending, any bonds, instrument of ownership, or money posted and a written statement of other conditions of release must be delivered without delay to the court in which the charge is pending.

History: **En. 95-1105 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1105; amd. Sec. 3, Ch. 710, L. 1991; amd. Sec. 77, Ch. 800, L. 1991; Sec. 46-9-202, MCA 1989; redes. 46-9-115 by Code Commissioner, 1991.**

46-9-116 through 46-9-120 reserved.

46-9-121. Return of bail bond after conviction. If a commercial surety bond is posted as bail and the defendant is convicted, the bond must be released and returned to the surety within 30 days after the conviction. If the defendant appeals, the court may order that bail be provided during the appeal.

History: **En. Sec. 1, Ch. 270, L. 1993.**

Part 2

Bail — General Procedural Provisions

46-9-201. Who may admit to bail. A judge may admit to bail any defendant properly appearing before the judge in a bail proceeding. When bound over to any court or judge having jurisdiction of the offense charged, bail must be continued provided that the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, a judge before whom the trial was had or a judge having the power to issue a writ of habeas corpus may admit the defendant to bail. For purposes of this section, a defendant's appearance before a judge may be either by physical appearance before the court or by two-way electronic audio-video communication as provided in 46-9-206.

History: **En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(a); amd. Sec. 2, Ch. 710, L. 1991; amd. Sec. 10, Ch. 262, L. 1993.**

46-9-202. Renumbered 46-9-115 by Code Commissioner, 1991.

46-9-203. Report to county attorney concerning drug users. A city judge, judge of a municipal court, or justice of the peace shall report immediately to the county attorney of the county wherein his court is located any knowledge or information acquired by him in a trial of a cause or hearing before him, which knowledge or information shows or tends to show that any person is a drug user or drug addict. If such person is under arrest or liberated on bail at the time the knowledge or information is acquired, such person may not be liberated, if under arrest, or the bail discharged by the judge or justice of the peace until the report is made to the county attorney.

History: **En. Sec. 10, Ch. 202, L. 1921; re-en. Sec. 3198, R.C.M. 1921; re-en. Sec. 3198, R.C.M. 1935; R.C.M. 1947, 66-1520; amd. Sec. 6, Ch. 116, L. 1979.**

46-9-204. Repealed. Sec. 263, Ch. 800, L. 1991.

History: **En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(b).**

46-9-205. Renumbered 46-9-510 by Code Commissioner, 1991.

46-9-206. Setting bail — appearance or use of two-way electronic audio-video communication. The requirement that a defendant be taken before a judge for setting of bail may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for the hearing of an application for admission to bail.

History: En. Sec. 3, Ch. 710, L. 1991.

Part 3
The Amount of Bail

46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to assure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and of his ties to the community;

(9) considerate of the defendant's family relationships and ties;

(10) considerate of the defendant's employment status; and

(11) sufficient to include the charge imposed in 46-18-236.

History: En. 95-1110 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1110; amd. Sec. 3, Ch. 692, L. 1985; amd. Sec. 2, Ch. 17, Sp. L. June 1986.

Cross-References

Excessive bail prohibited, Art. II, sec. 22, Mont. Const.

46-9-302. Bail schedule — acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is partner or family member assault, as defined in 45-5-206, or stalking, as defined in 45-5-220.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1103 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1103; amd. Sec. 6, Ch. 700, L. 1985; amd. Sec. 78, Ch. 800, L. 1991; amd. Sec. 4, Ch. 292, L. 1993; amd. Sec. 5, Ch. 425, L. 1993; amd. Sec. 16, Ch. 350, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 350 in (1), in second sentence, substituted "partner or family member assault" for "domestic abuse, any assault against a family member or a partner".

Cross-References

Duty of patrol officer to accept bail, 44-1-1101.

Procedure for acceptance of bail by patrol officer, 44-1-1102.

Criminal offense of domestic abuse, 45-5-206.

46-9-303. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1104 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 10, Ch. 184, L. 1977; R.C.M. 1947, 95-1104.

46-9-304 through 46-9-310 reserved.

46-9-311. Reduction, increase, revocation, or substitution of bail. (1) Upon application by the state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

History: En. 95-1111 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1111; amd. Sec. 7, Ch. 116, L. 1979.

Part 4

Furnishing Bail

46-9-401. Forms of bail. (1) Bail may be furnished in the following ways:

(a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds, certificates of deposit, or other personal property approved by the court;

(b) by pledging real estate situated within the state with an unencumbered equity, not exempt, owned by the defendant or sureties at a value double the amount of the required bail;

(c) by posting a written undertaking executed by the defendant and by two sufficient sureties; or

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court.

(3) Nothing in this chapter prohibits a surety from surrendering the defendant pursuant to 46-9-510 in a case in which the surety feels insecure in accepting liability for the defendant.

History: En. 95-1112 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1112; amd. Sec. 79, Ch. 800, L. 1991.

46-9-402. Persons prohibited from furnishing bail security. No attorney-at-law and no official authorized to admit another to bail shall act as surety or furnish bail.

History: En. 95-1120 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1120.

Cross-References

Attorney not to become surety on bond, 37-61-419.

46-9-403. Qualifying property as bail. (1) If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.

(2) If the property is real estate:

(a) the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any and all encumbrances on the property, including the amount of each and the holder of the encumbrance, and the market value of the unencumbered equity owned by the defendant or sureties; and

(b) a certified copy of the schedule of the property must be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated. The state has a lien on the property from the time the copy is filed. The clerk and recorder shall enter, index, and record the schedule without requiring any fee.

(3) If the property posted as a condition of release is a written undertaking with sureties, each surety must be a resident or freeholder within the state. Each surety must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or judge on taking the property may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to the amount required.

(4) If the property posted as a condition of release is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in this state. The undertaking must be in the form prescribed by the commissioner of insurance and must state the following:

(a) the name and address of the commercial surety company that issued the bond;

(b) the amount of the bond and the unqualified obligation of the surety company to pay the court should the defendant fail to appear as guaranteed; and

(c) a provision that the surety company may not revoke the undertaking without good cause.

(5) The court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

History: En. 95-1113 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1113; amd. Sec. 8, Ch. 116, L. 1979; amd. Sec. 80, Ch. 800, L. 1991.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

46-9-404. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1114 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1114.

46-9-405 through 46-9-410 reserved.

46-9-411. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(3); amd. Sec. 1, Ch. 415, L. 1989.

46-9-412. Guaranteed arrest bond certificates. (1) A domestic or foreign surety company that has qualified to transact surety business in this state may, in any year, become surety in an amount not exceeding $1,000 with respect to any guaranteed arrest bond certificates issued in the year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking to become surety.

(2) The form of the undertaking must be prescribed by the commissioner of insurance and must include those matters required by 46-9-401.

History: En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(1), (2); amd. Sec. 2, Ch. 415, L. 1989; amd. Sec. 81, Ch. 800, L. 1991; amd. Sec. 11, Ch. 262, L. 1993.

Cross-References

Surety insurance, 33-1-211.

Suretyship, Title 33, ch. 26.

46-9-413. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1123 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1123.

46-9-414. Certificates accepted in lieu of cash. (1) A guaranteed arrest bond certificate must, when posted by the person whose signature appears on the certificate, be accepted in lieu of cash bail in an amount not exceeding $1,000 as a bail bond to guarantee the appearance of the person in any court, including a municipal court, in this state at the time required by the court when the person was arrested for violation of a motor vehicle law of this state or an ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate.

(2) A guaranteed arrest bond certificate is subject to the same forfeiture and enforcement provisions established by this chapter unless otherwise provided by law.

History: En. 95-1122 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 14, Ch. 184, L. 1977; R.C.M. 1947, 95-1122; amd. Sec. 3, Ch. 415, L. 1989; amd. Sec. 82, Ch. 800, L. 1991.

Part 5

Conditions of Bail — Violation Thereof

Part Cross-References

Bail-jumping, 45-7-308.

46-9-501. Renumbered 46-9-108 by Code Commissioner, 1991.

46-9-502. Conditions performed — bail discharged. When the conditions of bail have been performed and the accused has been discharged from his obligations in the cause, the court shall return to him or his sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate shall be discharged. If the bail is a written undertaking or a commercial surety bond, it shall be discharged and the sureties exonerated.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(a).

46-9-503. Violation of release condition — forfeiture. (1) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

(2) If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address within 10 working days or the bond becomes void and must be released and returned to the surety within 5 working days.

(3) If at any time within 30 days after the forfeiture the defendant's sureties appear and satisfactorily excuse the defendant's failure to appear, the judge may direct the forfeiture to be discharged upon terms as may be just. If at any time within 90 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(b), (c); amd. Sec. 83, Ch. 800, L. 1991; amd. Sec. 2, Ch. 270, L. 1993.

Cross-References

Disposition of bail forfeited for traffic offenses, 20-7-505.

Forfeiture of bail, 46-30-305.

46-9-504. Renumbered 46-9-512 by Code Commissioner, 1991.

46-9-505. Issuance of arrest warrant — redetermining bail. (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of the failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person.

(2) On verified application by the prosecutor setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) Upon the arrest, the defendant must be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

History: En. 95-1107 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1107; amd. Sec. 12, Ch. 262, L. 1993.

46-9-506 through 46-9-509 reserved.

46-9-510. Surrender of defendant. (1) At any time before the forfeiture of bail:

(a) the defendant may surrender to the court or any peace officer of this state; or

(b) the surety company may arrest the defendant and surrender the defendant to the court or any peace officer of this state.

(2) The peace officer shall detain the defendant in the officer's custody as upon commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the defendant. The court may then order the bail exonerated.

History: En. 95-1115 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1115; amd. Sec. 84, Ch. 800, L. 1991; Sec. 46-9-205, MCA 1989; redes. 46-9-510 by Code Commissioner, 1991.

46-9-511. Forfeiture procedure. When an order of forfeiture is not discharged, the court having jurisdiction shall proceed with the forfeiture of bail as follows:

(1) if money has been posted as bail, the court shall pay the money to the treasury of the city or county where the money was posted; or

(2) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the judgment or forfeiture must be paid into the treasury of the city or county where the case is pending.

(3) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

History: En. Sec. 85, Ch. 800, L. 1991.

46-9-512. Use of forfeited bail as restitution. (1) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. Whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined by law.

(2) If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss.

(3) An order to require restitution is a judgment against the defendant and the defendant's sureties, and the court may order the restitution to be made by payment of money deposited as bail. Any balance of the bail money must be disposed of in the same manner as provided in 46-9-511.

(4) A determination or decision under this section is not admissible as evidence in any other civil action and is not res judicata in any civil action.

History: En. 95-1117 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1117; amd. Sec. 1, Ch. 132, L. 1985; amd. Sec. 1, Ch. 142, L. 1989; amd. Sec. 86, Ch. 800, L. 1991; Sec. 46-9-504, MCA 1989; redes. 46-9-512 by Code Commissioner, 1991.

Cross-References

Execution, Title 25, ch. 13 and 14.

Execution sale, Title 25, ch. 13, part 7.

Redemption of real property after execution sale, Title 25, ch. 13, part 8.

CHAPTER 10

PRELIMINARY EXAMINATION

Part 1 — General Provisions

46-10-101. Repealed.
46-10-102. Renumbered 46-10-106 by Code Commissioner, 1991.
46-10-103 and 46-10-104 reserved.
46-10-105. Preliminary examination — when held.
46-10-106. Waiver.

Part 2 — Procedure at Preliminary Examination

46-10-201. Repealed.
46-10-202. Presentation of evidence.
46-10-203. Disposition of defendant.
46-10-204. Record of preliminary examination.

Part 1
General Provisions

46-10-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1201.

46-10-102. Renumbered 46-10-106 by Code Commissioner, 1991.

46-10-103 and 46-10-104 reserved.

46-10-105. Preliminary examination — when held. After the initial appearance, in all cases in which the charge is triable in district court, the justice's court shall, within a reasonable time, hold a preliminary examination unless:

(1) the defendant waives a preliminary examination;
(2) the district court has granted leave to file an information;
(3) an indictment has been returned; or
(4) the case is triable in justice's court.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part); amd. Sec. 89, Ch. 800, L. 1991; Sec. 46-7-103, MCA 1989; redes. 46-10-105 by Code Commissioner, 1991.

Cross-References

Justices' Courts' jurisdiction — preliminary hearings, 3-10-303.

46-10-106. Waiver. If the defendant waives the preliminary examination, the judge shall hold the defendant to answer to the court having jurisdiction of the offense.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(b); amd. Sec. 9, Ch. 116, L. 1979; amd. Sec. 90, Ch. 800, L. 1991; Sec. 46-10-102, MCA 1989; redes. 46-10-106 by Code Commissioner, 1991.

Part 2
Procedure at Preliminary Examination

46-10-201. Repealed. Sec. 49, Ch. 262, L. 1993.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(c); amd. Sec. 10, Ch. 116, L. 1979; amd. Sec. 260, Ch. 800, L. 1991.

46-10-202. Presentation of evidence. (1) The defendant may not enter a plea. The judge shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against the defendant and may introduce evidence in the defendant's own behalf. For purposes of this section, a preliminary examination conducted by the use of two-way electronic audio-video communication that allows all of the participants to be observed and heard by all other participants and that allows the defendant to cross-examine witnesses is considered to be an examination of a witness in the presence of the defendant. Two-way electronic audio-video communication may not be used unless the defendant's counsel is physically present with the defendant, unless this requirement is waived by the defendant.

(2) During the examination of a witness or when the defendant is making a statement or testifying, the judge may, and on the request of the defendant or state shall, exclude all other witnesses. The judge may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in 46-13-302.

(4) For purposes of a hearing under this chapter, a defendant may, in the discretion of the court, appear before the court either by physical appearance or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and the defendant's counsel, if any, can communicate privately, and so that the defendant and the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for a preliminary examination.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part), 95-1203; amd. Sec. 11, Ch. 116, L. 1979; amd. Sec. 4, Ch. 710, L. 1991; amd. Sec. 91, Ch. 800, L. 1991; amd. Sec. 13, Ch. 262, L. 1993.

46-10-203. Disposition of defendant. (1) If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the judge shall hold the defendant to answer to the court having jurisdiction of the offense.

(2) If it appears from the evidence that there is insufficient probable cause to believe that an offense has been committed or that the defendant committed it, the judge shall dismiss the complaint and discharge the defendant. The discharge of the defendant may not preclude the state from instituting a subsequent prosecution for the same offense.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part); amd. Sec. 12, Ch. 116, L. 1979; amd. Sec. 92, Ch. 800, L. 1991.

46-10-204. Record of preliminary examination. (1) The testimony of each witness must be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, if the judge holds the defendant to answer a charge, the judge shall transmit immediately to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by the judge.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(d); amd. Sec. 13, Ch. 116, L. 1979; amd. Sec. 93, Ch. 800, L. 1991.

CHAPTER 11

COMMENCEMENT OF PROSECUTION

Part 1 — Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution.
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46-11-403. Renumbered 46-11-205 by Code Commissioner, 1991.
46-11-404. Joinder of offenses and defendants.
46-11-405. Discharge of codefendant.
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46-11-410. Multiple charges.

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46-11-501. Repealed.
46-11-502. Renumbered 46-11-410 by Code Commissioner, 1991.
46-11-503. Prosecution based on same transaction barred by former prosecution.
46-11-504. Former prosecution in another jurisdiction.
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Part 6 — Ensuring Availability of Material Witness Preserving Testimony

46-11-601. Recognizance by or deposition of witness.

Part 7 — Pretrial Proceedings—Confidentiality

46-11-701. Pretrial proceedings — exclusion of public and sealing of records.

Chapter Cross-References

Initiation of criminal proceedings — grand jury, Art. II, sec. 20, Mont. Const.

Repeal of law creating criminal offenses — when bar to prosecution, 1-2-205.

Attorney General or County Attorney to prosecute — Legislative Audit Act, 5-13-310.

Power of Commissioner of Political Practices, Title 13, ch. 37, part 1.

Duty of County Attorney — election law violations, 13-37-124, 13-37-125.

Immunity from misdemeanor prosecution — suit for injunction, 30-14-222.

Prosecution — unemployment compensation, 39-51-309.

Statute of Limitations, 45-1-205, 45-1-206.

Commencing prosecution — official misconduct, 45-7-401.

Immunity for witness — Montana Consumer Product Safety Act of 1975, 50-30-108.

Notice before prosecution — Montana Consumer Product Safety Act of 1975, 50-30-302, 50-30-303.

Notice and chance to present views before criminal prosecution — Montana Food, Drug, and Cosmetic Act, 50-31-504, 50-31-505.

Part 1

Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution. A prosecution may be commenced by:

(1) a complaint;

(2) an information following a preliminary examination or waiver of a preliminary examination;

(3) an information after leave of court has been granted; or

(4) an indictment upon a finding by a grand jury.

History: En. 95-1501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1501; amd. Sec. 94, Ch. 800, L. 1991.

Cross-References

General time limitations — prosecution is commenced when an indictment is found or an information or complaint is filed, 45-1-205.

46-11-102. Required methods. (1) All prosecutions of offenses charged in a district court must be by indictment or information.

(2) All other prosecutions of offenses must be by complaint.

History: En. 95-1502 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 184, L. 1977; R.C.M. 1947, 95-1502; amd. Sec. 95, Ch. 800, L. 1991.

46-11-103 through 46-11-109 reserved.

46-11-110. Filing complaint. When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the sworn complaint or any affidavits, if filed, to determine whether probable cause exists to allow the filing of a charge.

History: En. Sec. 96, Ch. 800, L. 1991; amd. Sec. 14, Ch. 262, L. 1993.

46-11-111. Amending complaint. A court may allow a complaint to be amended under the same circumstances and in the same manner as an information as provided in 46-11-205.

History: En. Sec. 97, Ch. 800, L. 1991; amd. Sec. 52, Ch. 18, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 18 at end substituted "46-11-205" for "46-11-103".

Part 2
Filing of Information

46-11-201. Leave to file information. (1) The prosecutor may apply directly to the district court for permission to file an information against a named defendant. If the defendant named is a district court judge, the prosecutor shall apply directly to the supreme court for leave to file the information.

(2) An application must be by affidavit supported by evidence that the judge or chief justice may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge or chief justice shall grant leave to file the information, otherwise the application is denied.

(3) When leave to file an information has been granted, a warrant or summons may issue for the defendant's arrest or appearance.

(4) When leave is granted to file an information against a district court judge, the chief justice shall designate and direct a judge of the district court of another district to preside at the trial of the information and hear and determine all pleas and motions affecting the defendant under the information before and after judgment. All necessary records must be transferred to the clerk of the district court of the district in which the action arose.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(a), (b); amd. Sec. 98, Ch. 800, L. 1991.

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

46-11-202. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(c).

46-11-203. Time for filing information. (1) After a finding of probable cause following a preliminary examination or waiver of a preliminary examination or after leave of court has been granted, the prosecutor shall file within 30 days in the proper district court an information charging the defendant with the offense or any other offense supported by probable cause.

(2) Unless good cause to the contrary is shown the court shall dismiss the prosecution if an information is not filed within 30 days as required in subsection (1).

History: En. 95-1302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1302; amd. Sec. 100, Ch. 800, L. 1991.

46-11-204. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1303.

46-11-205. Amending information as to substance or form. (1) The court may allow an information to be amended in matters of substance at any time, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the proposed amendment, and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended. A copy of the proposed amended information must be included with the motion to amend the information.

(2) If the court grants leave to amend the information, the defendant must be arraigned on the amended information without unreasonable delay and must be given a reasonable period of time to prepare for trial on the amended information.

(3) The court may permit an information to be amended as to form at any time before a verdict or finding is issued if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

History: En. 95-1505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 431, L. 1977; R.C.M. 1947, 95-1505; amd. Sec. 1, Ch. 62, L. 1981; amd. Sec. 99, Ch. 800, L. 1991; Sec. 46-11-403, MCA 1989; redes. 46-11-205 by Code Commissioner, 1991.

Part 3

Grand Jury

Part Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

Grand jury defined, 3-15-103.

Grand jury — composition, summoning, impaneling, Title 3, ch. 15, part 6.

46-11-301. Summoning grand jury. (1) A grand jury may only be drawn and summoned when the district judge, in his discretion, considers a grand jury to be in the public interest and orders the grand jury to be drawn or summoned. The composition and drawing of a grand jury must be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. A member of the jury who becomes unable to perform the juror's duty may be replaced by an alternate.

History: En. 95-1401 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 3, L. 1973; R.C.M. 1947, 95-1401(part); amd. Sec. 101, Ch. 800, L. 1991.

46-11-302. Challenges to grand jury or grand jurors. (1) The prosecutor may challenge the panel of a grand jury on the ground that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges must be made before the administration of the oath of the jurors, may be oral or in writing, and must be tried and decided by the court.

(2) At any time for cause shown, the district court may excuse or discharge a juror either temporarily or permanently, and in the latter event, the court may impanel another person in place of the juror discharged.

(3) A motion to dismiss the indictment may be based on the ground that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment may not be dismissed on the ground that one or more members are not legally qualified if it appears from the record kept pursuant to this part that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment.

History: En. 95-1402 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 3, L. 1973; R.C.M. 1947, 95-1402; amd. Sec. 102, Ch. 800, L. 1991; amd. Sec. 15, Ch. 262, L. 1993.

46-11-303. Foreman. The district court shall appoint one of the jurors to be foreman. The foreman has the power to administer oaths or affirmations and shall sign all indictments. The foreman or another juror designated by the foreman shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record may not be made public except on order of the district court.

History: En. 95-1403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1403; amd. Sec. 103, Ch. 800, L. 1991.

46-11-304. Appointing special prosecutor. When the county attorney or attorney general is the subject of a grand jury investigation, the district court shall appoint a special prosecutor. If a special prosecutor is appointed, the county attorney's or attorney general's office may not participate in an official capacity, but staff members may appear as witnesses.

History: En. Sec. 104, Ch. 800, L. 1991.

46-11-305 and 46-11-306 reserved.

46-11-307. Closed hearing. Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed. This requirement may not affect a defendant's discovery rights after the filing of the indictment.

History: En. Sec. 106, Ch. 800, L. 1991.

46-11-308. Who may be present. The prosecutor, witnesses, interpreters, and a stenographer or operator of a recording device used for the purpose of taking the evidence may be present while the grand jury is in session. No person other than the jurors may be present while the grand jury is deliberating or voting.

History: En. Sec. 111, Ch. 800, L. 1991.

46-11-309 reserved.

46-11-310. Duties of grand jurors. The grand jury shall inquire into those matters as directed by the court summoning the jury and shall inquire into other matters as presented by the prosecutor.

History: En. Sec. 107, Ch. 800, L. 1991.

46-11-311. Charge to grand jury. When a grand jury is impaneled and sworn, it must be charged by the judge who summoned it. In making the charge, the district court shall instruct the jury as to its duties and the matters that jurors may consider. The prosecutor may bring additional matters before the grand jury that are consistent with the original charge or that are developed during the proceedings.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(a); amd. Sec. 105, Ch. 800, L. 1991.

46-11-312. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part), 95-1405(a) thru (e).

46-11-313. Subpoena of witnesses. (1) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the foreman of the grand jury, or by the judge of the district court.

(2) The fees and mileage of witnesses subpoenaed pursuant to this section must be the same as those for witnesses in criminal actions.

(3) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this section, including the provisions of Title 46, chapter 15, part 1.

History: En. 95-1407 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 16, Ch. 184, L. 1977; R.C.M. 1947, 95-1407; amd. Sec. 108, Ch. 800, L. 1991.

46-11-314. Reception of evidence. In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before it or that furnished by legal evidence or the deposition of a witness.

History: En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; R.C.M. 1947, 95-1408(1), (2); amd. Sec. 109, Ch. 800, L. 1991.

46-11-315. Advice and assistance to grand jury. (1) The grand jury may at all times ask the advice of the judge. Unless advice is asked, the judge may not be present during the sessions of the grand jury.

(2) The prosecutor may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever the prosecutor finds it necessary.

(3) Subject to the approval of the district court, the county attorney may employ a special prosecutor, investigators, interpreters, and experts at agreed-upon compensation to be first approved by the court.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(1) thru (4); amd. Sec. 110, Ch. 800, L. 1991.

46-11-316. Recorded proceedings. (1) The grand jury shall either appoint a stenographer to take in shorthand the testimony of witnesses or the testimony must be taken by a recording device, but the record so made must include the testimony of all witnesses on that particular investigation.

(2) The stenographic reporter or operator of a recording device shall, within 30 days after an indictment has been found, certify and file with the clerk of the district court the shorthand notes or the recordings made and an original transcript of the notes or recordings.

(3) An unintentional failure of any recording to reproduce all or any portion of a proceeding may not affect the validity of the prosecution.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(5); amd. Sec. 112, Ch. 800, L. 1991.

46-11-317. Secrecy of proceedings — disclosure. (1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to any prosecutor or investigator of this state and prosecutors or investigators from any other state or the federal government for use in the performance of the prosecutor's or investigator's duty.

(2) A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, or the prosecutor may not disclose matters occurring before the grand jury except as otherwise permitted by Title 46. An obligation of secrecy may not be imposed on a person except in accordance with this section. A knowing violation of this section may be punishable as contempt of court.

(3) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may be made:

(a) if directed by the district court prior to or in combination with a judicial proceeding;

(b) when permitted by the district court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury; or

(c) when permitted by the district court, to a defendant pursuant to a proper discovery motion.

History: En. 95-1409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1409; amd. Sec. 113, Ch. 800, L. 1991.

46-11-318. Discharge of grand jury. When the grand jury certifies the completion of business before it and the district court concurs, the grand jury must be discharged by the district court.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part); amd. Sec. 114, Ch. 800, L. 1991.

46-11-319. Expenses of grand jury. (1) Except as provided in subsection (2), all expenses of the grand jury, including expenses for special prosecutors, experts, investigators, and interpreters, if any, must be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor or by the clerk of the district court upon a written order of the judge of the district court of the county.

(2) If the county has a district court fund, all expenses of a grand jury must be paid out of that fund.

(3) Subject to the procedures established by law, the state shall reimburse the court for juror and witness fees and witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in that fund.

History: En. 95-1405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1405(f); amd. Sec. 4, Ch. 66, L. 1985; amd. Sec. 12, Ch. 680, L. 1985; amd. Sec. 115, Ch. 800, L. 1991.

46-11-320 through 46-11-330 reserved.

46-11-331. Finding an indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together would in its judgment warrant a conviction by a trial jury. An indictment may be found only upon the concurrence of at least eight grand jurors.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge.

History: (1)En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; Sec. 95-1408, R.C.M. 1947; (2)En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; Sec. 95-1410, R.C.M. 1947; R.C.M. 1947, 95-1408(3), 95-1410(a); amd. Sec. 116, Ch. 800, L. 1991.

46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be signed by and presented by the foreman to the district court in the presence of the grand jury and must be filed with the clerk. The district court shall then issue an arrest warrant or summons for the defendant.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(b); amd. Sec. 117, Ch. 800, L. 1991; amd. Sec. 16, Ch. 262, L. 1993.

46-11-333. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(c), (d).

Part 4

The Charge

Part Cross-References

Joinder of charges — conspiracy, 45-4-102.

Alternate charges — attempt, 45-4-103.

46-11-401. Form of charge. (1) The charge must be in writing and in the name of the state or the appropriate municipality and must specify the court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) If the charge is by information or indictment, it must include endorsed on the information or indictment the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it must be signed on oath by a peace officer, by a person having knowledge of the facts, or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the foreman of the grand jury.

(5) The court, on motion of the defendant, may strike surplusage from the indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(a) thru (e); amd. Sec. 118, Ch. 800, L. 1991; amd. Sec. 17, Ch. 262, L. 1993.

46-11-402. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(f).

46-11-403. Renumbered 46-11-205 by Code Commissioner, 1991.

46-11-404. Joinder of offenses and defendants. (1) Two or more offenses or different statements of the same offense may be charged in the same charging document in a separate count, or alternatively, if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same transactions connected together or constituting parts of a common scheme or plan. Allegations made in one count may be incorporated by reference in another count.

(2) If two or more charging documents are filed in the case, the court may order them to be consolidated.

(3) The prosecution is not required to elect between the different offenses set forth in the charging document, and the defendant may be convicted of any number of the offenses charged except as provided in 46-11-410. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

(4) Two or more defendants may be charged in the same indictment, information, or complaint if they are alleged to have participated in the same transaction constituting an offense or offenses. The defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

History: En. 95-1504 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(1) thru (4); amd. Sec. 119, Ch. 800, L. 1991.

46-11-405. Discharge of codefendant. (1) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the prosecutor, direct any defendant to be discharged so that the defendant may be a witness for the prosecution.

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to require the defendant to put on a defense, the court must order that defendant to be discharged before the evidence is closed so that the discharged defendant may be a witness for the codefendant.

History: En. Sec. 187, p. 245, Bannack Stat.; re-en. Sec. 308, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Rev. Stat. 1879; re-en. Sec. 309, 3d Div. Comp. Stat. 1887; amd. Secs. 2075, 2076, Pen. C. 1895; re-en. Secs. 9276, 9277, Rev. C. 1907; re-en. Secs. 11974, 11975, R.C.M. 1921; Cal. Pen. C. Secs. 1099, 1100; re-en. Secs. 11974, 11975, R.C.M. 1935; Secs. 94-7206, 94-7207, R.C.M. 1947; redes. 95-1504(d) and (e) by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(5), (6); amd. Sec. 18, Ch. 262, L. 1993.

46-11-406 through 46-11-409 reserved.

46-11-410. Multiple charges. (1) When the same transaction may establish the commission of more than one offense, a person charged with the conduct may be prosecuted for each offense.

(2) A defendant may not, however, be convicted of more than one offense if:

(a) one offense is included in the other;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other;

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a specific instance of the conduct; or

(e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of the conduct constitute separate offenses.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(2); amd. Sec. 120, Ch. 800, L. 1991; Sec. 46-11-502, MCA 1989; redes. 46-11-410 by Code Commissioner, 1991.

Part 5
Effect of Former Prosecutions

Part Cross-References
Rights of accused — double jeopardy, Art. II, sec. 25, Mont. Const.

46-11-501. Repealed. Sec. 263, Ch. 800, L. 1991.
History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(1).

46-11-502. Renumbered 46-11-410 by Code Commissioner, 1991.

46-11-503. Prosecution based on same transaction barred by former prosecution. (1) When two or more offenses are known to the prosecutor, are supported by probable cause, and are consummated prior to the original charge and jurisdiction and venue of the offenses lie in a single court, a prosecution is barred if:

(a) the former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense that is subsequently set aside is an acquittal of the greater offense that was charged.

(b) the former prosecution resulted in a conviction that has not been set aside, reversed, or vacated;

(c) after a charge had been filed, the prosecution was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated; or

(d) the former prosecution was terminated for reasons not amounting to an acquittal and takes place:

(i) in a jury trial, after the first witness is sworn but before a verdict is returned; or

(ii) in a nonjury trial, after the first witness is sworn but before a judgment as to guilt or innocence is reached.

(2) A prosecution based upon the same transaction as a former prosecution is not barred under subsection (1)(d) when:

(a) the defendant consents to the termination or waives his right to object to the termination; or

(b) the trial court finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(3); amd. Sec. 121, Ch. 800, L. 1991.

46-11-504. Former prosecution in another jurisdiction. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, overlapping, or concurrent jurisdiction in this state, a prosecution in any other jurisdiction is a bar to a subsequent prosecution in this state under the same circumstances barring further prosecution in this state if:

(1) the first prosecution resulted in an acquittal or in a conviction and the subsequent prosecution is based on an offense arising out of the same transaction; or

(2) the former prosecution was terminated, after the charge had been filed, by an acquittal or by a final order or judgment for the defendant that has not been set aside, reversed, or vacated and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact that must be established for conviction of the offense for which the defendant is subsequently prosecuted.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(4); amd. Sec. 122, Ch. 800, L. 1991.

46-11-505. Former prosecution not a bar. A prosecution is not a bar if:

(1) the former prosecution was before a court that lacked jurisdiction over the defendant or the offense; or

(2) the former prosecution resulted in a judgment of conviction that was held invalid in a postconviction hearing.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(5); amd. Sec. 123, Ch. 800, L. 1991.

Part 6

Ensuring Availability of Material Witness Preserving Testimony

Part Cross-References

Detention of witnesses in criminal proceedings, Art. II, sec. 23, Mont. Const.

46-11-601. Recognizance by or deposition of witness. (1) If the defendant is held to answer after a preliminary examination, after the defendant has waived a preliminary examination, after the district court has granted leave to file an information, or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written undertaking may be remanded to custody but may not be held longer than is necessary to take the witness's deposition. After the deposition is taken, the witness must be immediately discharged.

(3) The deposition must be taken in the presence of the prosecutor and the defendant and the defendant's counsel unless either the prosecutor or the defendant and the defendant's counsel fail to attend after reasonable notice of the time and place set for taking the deposition.

History: **En. 95-1204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1204; amd. Sec. 19, Ch. 262, L. 1993.**

Cross-References

Depositions in criminal proceedings, Art. II, sec. 23, Mont. Const.

Clerk of District Court to keep witness book, 3-5-510.

Procedure in reference to witnesses' certificates, 3-5-511.

Witness from another state summoned to testify in this state, 46-15-113.

When depositions taken, 46-15-201.

Procedure for taking depositions, 46-15-202.

Part 7

Pretrial Proceedings — Confidentiality

46-11-701. Pretrial proceedings — exclusion of public and sealing of records. (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a hearing on a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) Notwithstanding closure of a proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect either party's right to a fair trial or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.

(6) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

History: **En. Sec. 124, Ch. 800, L. 1991; amd. Sec. 63, Ch. 10, L. 1993; amd. Sec. 20, Ch. 262, L. 1993; amd. Sec. 5, Ch. 125, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 125 inserted (5) relating to victim's presence at pretrial proceedings; and made minor changes in style.

CHAPTER 12

ARRAIGNMENT OF DEFENDANT

Part 1 — General Provisions

46-12-101. Repealed.
46-12-102. Place of arraignment.
46-12-103. Repealed.
46-12-104. Bringing defendant into court.
46-12-105. Joint defendants.

Part 2 — Procedure on Arraignment

46-12-201. Manner of conducting arraignment — use of two-way electronic audio-video communication — exception.
46-12-202. Renumbered 46-12-210 by Code Commissioner, 1991.
46-12-203. Time allowed to answer.
46-12-204. Plea alternatives.
46-12-205. Record of arraignment.
46-12-206. Renumbered 46-12-213 by Code Commissioner, 1991.
46-12-207 through 46-12-209 reserved.
46-12-210. Advice to defendant.
46-12-211. Plea agreement procedure.
46-12-212. Determining accuracy of plea.
46-12-213. Harmless error.

Chapter Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Part 1

General Provisions

46-12-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1601.

46-12-102. Place of arraignment. The defendant must be arraigned in he court that has trial jurisdiction of the charge.

History: En. 95-1602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1602; amd. Sec. 130, Ch. 800, L. 1991.

46-12-103. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1603; amd. Sec. 5, Ch. 710, L. 1991.

46-12-104. Bringing defendant into court. The court may direct any fficial who has custody of the defendant to bring him before the court to be rraigned.

History: En. 95-1604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1604.

46-12-105. Joint defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

History: En. 95-1605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1605.

Part 2

Procedure on Arraignment

46-12-201. Manner of conducting arraignment — use of two-way electronic audio-video communication — exception. (1) Arraignment must be conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead. For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an arraignment in open court.

(2) The court shall inquire of the defendant or the defendant's counsel the defendant's true name, and if the defendant's true name is given as any other than that used in the charge, the court shall order the defendant's name to be substituted for the name under which the defendant is charged.

(3) The court shall determine whether the defendant is under any disability that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until the court determines the defendant is able to proceed.

(4) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication.

(5) A judge may order a defendant's physical appearance in court for arraignment. In a felony case, a judge may not accept a plea of guilty from a defendant not physically present in the courtroom.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(a), (b), (c); amd. Sec. 6, Ch. 710, L. 1991; amd. Sec. 131, Ch. 800, L. 1991.

46-12-202. Renumbered 46-12-210 by Code Commissioner, 1991.

46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions.

History: En. 95-1607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1607.

Cross-References

Defendant's right to reasonable time for preparation of trial after plea, 46-16-106.

46-12-204. Plea alternatives. (1) A defendant may plead guilty or not guilty. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) The court may not accept a plea of guilty without first determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 2, Ch. 606, L. 1985; amd. Sec. 132, Ch. 800, L. 1991.

46-12-205. Record of arraignment. The court must prepare and keep a written record of all arraignment proceedings. In district courts a verbatim record of all arraignment proceedings must be made, preserved, and filed with the court.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(f).

46-12-206. Renumbered 46-12-213 by Code Commissioner, 1991.

46-12-207 through 46-12-209 reserved.

46-12-210. Advice to defendant. (1) Before accepting a plea of guilty, the court shall determine that the defendant understands the following:

(a) (i) the nature of the charge for which the plea is offered;

(ii) the mandatory minimum penalty provided by law, if any;

(iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be represented by an attorney at every stage of the proceeding and that, if necessary, one will be appointed to represent the defendant;

(c) that the defendant has the right:

(i) to plead not guilty or to persist in that plea if it has already been made;

(ii) to be tried by a jury and at the trial has the right to the assistance of counsel;

(iii) to confront and cross-examine witnesses against the defendant; and

(iv) not to be compelled to reveal personally incriminating information;

(d) that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

(e) that if the defendant's plea of guilty is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial; and

(f) that if the defendant is not a United States citizen, a guilty plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1).

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 1, Ch. 606, L. 1985; amd. Sec. 1, Ch. 73, L. 1991; amd. Sec. 133, Ch. 800, L. 1991; Sec. 46-12-202, MCA 1989; redes. 46-12-210 by Code Commissioner, 1991; amd. Sec. 21, Ch. 262, L. 1993.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-12-211. Plea agreement procedure. (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

History: En. Sec. 134, Ch. 800, L. 1991; amd. Sec. 22, Ch. 262, L. 1993.

46-12-212. Determining accuracy of plea. (1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.

(2) A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty to the offense if the defendant considers the plea to be in the defendant's best interest and if a factual basis exists for the plea.

History: En. Sec. 135, Ch. 800, L. 1991.

46-12-213. Harmless error. Any variance from the procedure required by 46-12-211 that does not affect the substantial rights of the defendant must be disregarded.

History: En. 95-1608 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1608; amd. Sec. 136, Ch. 800, L. 1991; Sec. 46-12-206, MCA 1989; redes. 46-12-213 by Code Commissioner, 1991.

CHAPTER 13

PRETRIAL MOTIONS

Part 1 — General Provisions

46-13-101. Pretrial motions and notices.
46-13-102. Repealed.
46-13-103. Repealed.
46-13-104. Ruling on motions.
46-13-105. Repealed.
46-13-106. Renumbered 46-13-402 by Code Commissioner, 1991.
46-13-107 reserved.
46-13-108. Notice by prosecutor seeking persistent felony offender status.
46-13-109. Notice by prosecutor of other crimes, wrongs, or acts.
46-13-110. Omnibus hearing.

Part 2 — Specific Pretrial Motions

46-13-201. Renumbered 46-13-401 by Code Commissioner, 1991.
46-13-202. Motion for continuance.
46-13-203. Change of place of trial for prejudice.
46-13-204. Transfer of trial.
46-13-205. Return to original place of trial.
46-13-206 through 46-13-209 reserved.
46-13-210. Trial of indictments, informations, complaints, or defendants together.
46-13-211. Relief from prejudicial joinder.

Part 3 — Suppression of Evidence

46-13-301. Suppression of confession or admission.
46-13-302. Suppression of evidence.

Part 4 — Motion for Dismissal

46-13-401. Dismissal at instance of court or prosecution.
46-13-402. Effect of order to dismiss.

Chapter Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

Repeal of laws creating criminal offenses — when bar to prosecution, 1-2-205.

Immunity from misdemeanor prosecution — suit for injunction, 30-14-222.

Part 1
General Provisions

46-13-101. Pretrial motions and notices. (1) Except for good cause shown, any defense, objection, or request that is capable of determination without trial of the general issue must be raised at or before the omnibus hearing unless otherwise provided by Title 46.

(2) Failure of a party to raise defenses or objections or to make requests that must be made prior to trial, at the time set by the court, constitutes a waiver of the defense, objection, or request.

(3) The court, for cause shown, may grant relief from any waiver provided by this section. Lack of jurisdiction or the failure of a charging document to state an offense is a nonwaivable defect and must be noticed by the court at any time during the pendency of a proceeding.

(4) Unless the court provides otherwise, all pretrial motions must be in writing and must be supported by a statement of the relevant facts upon which the motion is being made. The motion must state with particularity the grounds for the motion and the order or relief sought.

History: En. 95-1701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1701; amd. Sec. 168, Ch. 800, L. 1991.

46-13-102. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1702.

46-13-103. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 22, Ch. 184, L. 1977; R.C.M. 1947, 95-1704.

46-13-104. Ruling on motions. (1) A motion made before trial must be determined before trial unless the court, for good cause, orders it deferred for determination at the trial of the general issue or until after the verdict, but a determination may not be deferred if a party's right to appeal is adversely affected.

(2) Except where mandated by Title 46, the court has discretion to conduct a hearing on the merits of a motion.

(3) The court's final determination of any pretrial motion must state, either in writing or on the record, the court's findings of fact and conclusions of law.

History: En. 95-1705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1705; amd. Sec. 169, Ch. 800, L. 1991.

46-13-105. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(1).

46-13-106. Renumbered 46-13-402 by Code Commissioner, 1991.

46-13-107 reserved.

46-13-108. Notice by prosecutor seeking persistent felony offender status. (1) Except for good cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender, notice of that fact must be given at or before the omnibus hearing pursuant to 46-13-110.

(2) The notice must specify the alleged prior convictions and may not be made known to the jury before the verdict is returned except as allowed by the Montana Rules of Evidence.

(3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a hearing to determine if the allegations in the notice are true.

(4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior convictions are true, the accused must be sentenced as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty is given by the defendant.

History: En. 95-1506 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 184, L. 1977; R.C.M. 1947, 95-1506; amd. Sec. 171, Ch. 800, L. 1991; Sec. 46-18-503, MCA 1989; redes. 46-13-108 by Code Commissioner, 1991; amd. Sec. 23, Ch. 262, L. 1993.

46-13-109. Notice by prosecutor of other crimes, wrongs, or acts. (1) Except for good cause shown, if the prosecutor intends to use evidence of other crimes, wrongs, or acts pursuant to Rule 404(b), Montana Rules of Evidence, notice must be given at or before the omnibus hearing held pursuant to 46-13-110.

(2) The notice must specify the other crimes, wrongs, or acts and must include a statement as to the purpose for which the evidence is to be offered.

(3) The notice must be filed and sealed until the time of trial or until a plea of guilty is entered by the defendant.

History: En. Sec. 47, Ch. 262, L. 1993.

46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210 and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking persistent felony offender status, 46-13-108;

(h) notice of other crimes, wrongs, or acts, 46-13-109;

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-401 and 46-13-402;

(k) motion for change of place of trial, 46-13-203 through 46-13-205;

(l) reasonableness of bail, Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary.

History: En. Sec. 170, Ch. 800, L. 1991; amd. Sec. 24, Ch. 262, L. 1993.

Part 2

Specific Pretrial Motions

46-13-201. Renumbered 46-13-401 by Code Commissioner, 1991.

46-13-202. Motion for continuance. (1) The defendant or the prosecutor may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and must be considered in the light of the diligence shown on the part of the movant. This section must be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the prosecution to a speedy trial.

History: En. 95-1708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1708; amd. Sec. 25, Ch. 262, L. 1993.

46-13-203. Change of place of trial for prejudice. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in the county.

(2) If the district court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, the district court shall:

(a) transfer the cause to any other county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to ensure that a fair trial may be had.

History: En. 95-1710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1710; amd. Sec. 14, Ch. 116, L. 1979; amd. Sec. 1, Ch. 556, L. 1981; amd. Sec. 174, Ch. 800, L. 1991; amd. Sec. 26, Ch. 262, L. 1993.

Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

46-13-204. Transfer of trial. If the court determines that a motion to dismiss based upon the grounds of lack of jurisdiction or improper place of trial is well-founded, it may, instead of ordering dismissal, order the cause transferred to a court of competent jurisdiction or to a proper place of trial.

History: En. 95-1707 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 184, L. 1977; R.C.M. 1947, 95-1707.

46-13-205. Return to original place of trial. When a trial occurs after a change of place of trial and a retrial is required, the cause must be returned to the county in which the charge was originally properly filed for further proceedings.

History: **En. Sec. 175, Ch. 800, L. 1991.**

46-13-206 through 46-13-209 reserved.

46-13-210. Trial of indictments, informations, complaints, or defendants together. The court may order two or more indictments, informations, complaints, or defendants to be tried together if the interests of justice require and the charges or defendants could have been joined in a single indictment, information, or complaint as provided for in 46-11-404.

History: **En. Sec. 176, Ch. 800, L. 1991; amd. Sec. 27, Ch. 262, L. 1993.**

46-13-211. Relief from prejudicial joinder. (1) If it appears that a defendant or the prosecution is prejudiced by a joinder of charges or defendants in an indictment, information, or complaint or by a joinder for trial together, the court may order separate trials, grant a severance of defendants, or provide whatever other relief justice requires.

(2) In ruling on a motion by a defendant for severance, the court may order the prosecutor to deliver to the court for inspection, in camera, any statements or confessions made by the defendants that the prosecution intends to introduce at trial.

History: **En. Sec. 177, Ch. 800, L. 1991.**

Part 3
Suppression of Evidence

46-13-301. Suppression of confession or admission. (1) A defendant may move to suppress as evidence any confession or admission given by the defendant on the ground that it was involuntary. The motion must be in writing and state facts showing why the confession or admission was involuntary.

(2) If the allegations of the motion state facts that, if true, show that the confession or admission was involuntary, the court shall conduct a hearing into the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary.

(3) The issue of the admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(4) If the motion is granted, the confession or admission is not admissible in evidence against the movant at the trial of the case.

History: **En. 95-1805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1805; amd. Sec. 1, Ch. 44, L. 1981; amd. Sec. 173, Ch. 800, L. 1991.**

46-13-302. Suppression of evidence. (1) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything obtained by the unlawful search and seizure.

(2) If the motion states facts that, if true, would show that the evidence should be suppressed, the court shall hear the merits of the motion at the omnibus hearing or at a later date if the court orders.

(3) If the motion is granted, the evidence is not admissible at trial.

History: En. 95-1806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1806; amd. Sec. 172, Ch. 800, L. 1991.

Cross-References

Unreasonable search and seizure prohibited, Art. II, sec. 11, Mont. Const.

Part 4
Motion for Dismissal

46-13-401. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the prosecuting attorney and in furtherance of justice, order a complaint, information, or indictment to be dismissed. However, the court may not order a dismissal of a complaint, information, or indictment, or a count contained in a complaint, information, or indictment, charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes.

(2) After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant's motion is not brought to trial within 6 months.

History: En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971; R.C.M. 1947, 95-1703; amd. Sec. 3, Ch. 606, L. 1985; amd. Sec. 178, Ch. 800, L. 1991; Sec. 46-13-201, MCA 1989; redes. 46-13-401 by Code Commissioner, 1991.

Cross-References

Right to a speedy trial, Art. II, sec. 24, Mont. Const.

46-13-402. Effect of order to dismiss. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged and, if admitted to bail, have bail exonerated or money deposited instead of bail refunded to the defendant.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(2); amd. Sec. 179, Ch. 800, L. 1991; Sec. 46-13-106, MCA 1989; redes. 46-13-402 by Code Commissioner, 1991.

CHAPTER 14
MENTAL COMPETENCY OF ACCUSED

Part 1 — Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect.
46-14-102. Evidence of mental disease or defect admissible to prove state of mind.
46-14-103. Mental disease or defect excluding fitness to proceed.

Part 2 — Procedure When Mental Disease or Defect an Issue

46-14-201. Renumbered 46-14-214 by Code Commissioner, 1991.

46-14-202. Examination of defendant.
46-14-203. Renumbered 46-14-206 by Code Commissioner, 1991.
46-14-204. Prosecution's right to examination.
46-14-205. Access to defendant for examination.
46-14-206. Report of examination.
46-14-207 through 46-14-210 reserved.
46-14-211. Repealed.
46-14-212. Renumbered 46-14-205 by Code Commissioner, 1991.
46-14-213. Psychiatric or psychological testimony upon trial.
46-14-214. Form of verdict and judgment.
46-14-215 and 46-14-216 reserved.
46-14-217. Admissibility of statements made during examination or treatment.
46-14-218 through 46-14-220 reserved.
46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.
46-14-222. Proceedings if fitness regained.

Part 3 — Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge.
46-14-302. Discharge or release upon motion of director.
46-14-303. Application for discharge or release by committed person.
46-14-304. Revocation of conditional release.
46-14-305 through 46-14-310 reserved.
46-14-311. Consideration of mental disease or defect in sentencing.
46-14-312. Sentence to be imposed.
46-14-313. Discharge of defendant from supervision.

Part 4 — Privileged Communications

46-14-401. Renumbered 46-14-217 by Code Commissioner, 1991.

Part 1

Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect. As used in 46-14-204, 46-14-312, 46-14-313, and this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

History: En. 95-501 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 184, L. 1977; R.C.M. 1947, 95-501; amd. Sec. 1, Ch. 713, L. 1979; amd. Sec. 149, Ch. 800, L. 1991.

Cross-References

Voluntary act — material element of every offense, 45-2-202.

Criminal responsibility of person in intoxicated or drugged condition, 45-2-203.

Compulsion of threatened bodily injury, 45-2-212.

46-14-102. Evidence of mental disease or defect admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect is admissible to prove that the defendant did or did not have a state of mind that is an element of the offense.

History: En. 95-502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-502; amd. Sec. 150, Ch. 800, L. 1991.

46-14-103. Mental disease or defect excluding fitness to proceed. A person who, as a result of mental disease or defect, is unable to understand the proceedings against the person or to assist in the person's own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures.

History: En. 95-504 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-504; amd. Sec. 151, Ch. 800, L. 1991.

Part 2

Procedure When Mental Disease or Defect an Issue

46-14-201. Renumbered 46-14-214 by Code Commissioner, 1991.

46-14-202. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist or licensed clinical psychologist or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist or licensed clinical psychologist, which designation may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or licensed clinical psychologist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1).

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(1), (2); amd. Sec. 3, Ch. 713, L. 1979; amd. Sec. 1, Ch. 616, L. 1981; amd. Sec. 2, Ch. 361, L. 1983; amd. Sec. 13, Ch. 680, L. 1985; amd. Sec. 1, Ch. 127, L. 1987; amd. Sec. 152, Ch. 800, L. 1991.

Cross-References

Consideration of mental disease or defect in sentencing, 46-14-311.

46-14-203. Renumbered 46-14-206 by Code Commissioner, 1991.

46-14-204. Prosecution's right to examination. (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or defect, the prosecution is entitled to have the defendant examined by a qualified psychiatrist or licensed clinical psychologist.

(2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the prosecution.

History: En. Sec. 153, Ch. 800, L. 1991.

46-14-205. Access to defendant for examination. If either the defendant or the prosecution wishes the defendant to be examined by a qualified psychiatrist or licensed clinical psychologist selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether the defendant had, at the time the offense was committed, a particular state of mind that is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(2); amd. Sec. 5, Ch. 713, L. 1979; amd. Sec. 2, Ch. 127, L. 1987; amd. Sec. 154, Ch. 800, L. 1991; Sec. 46-14-212, MCA 1989; redes. 46-14-205 by Code Commissioner, 1991.

46-14-206. Report of examination. (1) A report of the examination must include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant is seriously mentally ill, as defined in 53-21-102, or is seriously developmentally disabled, as defined in 53-20-102;

(c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(3) thru (5); amd. Sec. 4, Ch. 713, L. 1979; amd. Sec. 155, Ch. 800, L. 1991; Sec. 46-14-203, MCA 1989; redes. 46-14-206 by Code Commissioner, 1991; amd. Sec. 1, Ch. 397, L. 1993.

46-14-207 through 46-14-210 reserved.

46-14-211. Repealed. Sec. 15, Ch. 713, L. 1979.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(1).

46-14-212. Renumbered 46-14-205 by Code Commissioner, 1991.

46-14-213. Psychiatric or psychological testimony upon trial. (1) Upon trial, any psychiatrist or licensed clinical psychologist who reported under 46-14-202 or 46-14-206 may be called as a witness by the prosecutor or by the defense. Both the prosecution and the defense may summon any other qualified psychiatrist or licensed clinical psychologist to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or licensed clinical psychologist who has examined the defendant testifies concerning the defendant's mental condition, the psy-

chiatrist or licensed clinical psychologist may make a statement as to the nature of the examination and the medical or psychological diagnosis of the mental condition of the defendant. The expert may make any explanation reasonably serving to clarify the expert's examination and diagnosis, and the expert may be cross-examined as to any matter bearing on the expert's competency or credibility or the validity of the expert's examination or medical or psychological diagnosis. A psychiatrist or licensed clinical psychologist may not offer an opinion to the jury on the ultimate issue of whether the defendant did or did not have a particular state of mind that is an element of the offense charged.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(3), (4); amd. Sec. 6, Ch. 713, L. 1979; amd. Sec. 3, Ch. 361, L. 1983; amd. Sec. 3, Ch. 127, L. 1987; amd. Sec. 156, Ch. 800, L. 1991.

46-14-214. Form of verdict and judgment. When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect the defendant did not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment must state that reason.

History: En. 95-503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-503; amd. Sec. 2, Ch. 713, L. 1979; amd. Sec. 1, Ch. 593, L. 1981; amd. Sec. 157, Ch. 800, L. 1991; Sec. 46-14-201, MCA 1989; redes. 46-14-214 by Code Commissioner, 1991.

Cross-References

Notice of certain defenses, 46-15-323.

46-14-215 and 46-14-216 reserved.

46-14-217. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric or psychological examination or treatment provided for in this section by a person subjected to examination or treatment is not admissible in evidence against the person at trial on any issue other than that of the person's mental condition. It is admissible on the issue of the person's mental condition, whether or not it would otherwise be considered a privileged communication, only when and after the defendant presents evidence that due to a mental disease or defect the defendant did not have a particular state of mind that is an element of the offense charged.

History: En. 95-509 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 5, Ch. 184, L. 1977; R.C.M. 1947, 95-509; amd. Sec. 13, Ch. 713, L. 1979; amd. Sec. 158, Ch. 800, L. 1991; Sec. 46-14-401, MCA 1989; redes. 46-14-217 by Code Commissioner, 1991.

Cross-References

Doctor-patient privilege, 26-1-805.

Psychologist-client privilege, 26-1-807.

46-14-218 through 46-14-220 reserved.

46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate institution of the department of public health and human services for so long as the unfitness endures.

(b) The institution shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the institution may petition the court for an order requiring compliance. The defendant has a right to a hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proven an overriding justification for the order and that the treatment being ordered is medically appropriate.

(c) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4), and the prosecutor shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as provided in 53-20-102(5), the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate institution of the department of corrections, of keeping the defendant there, and of bringing the defendant back are chargeable to the state and payable according to procedures established under 3-5-902(1).

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 7, Ch. 713, L. 1979; amd. Sec. 2, Ch. 616, L. 1981; amd. Sec. 1, Ch. 352, L. 1983; amd. Sec. 14, Ch. 680, L. 1985; amd. Sec. 4, Ch. 127, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 159, Ch. 800, L. 1991; amd. Sec. 1, Ch. 211, L. 1995; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 204, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Phrase Change: Chapter 211 inserted (2)(b) concerning individualized treatment plan and procedure for noncompliance; in (4), after "trial and", inserted "that is made"; and made minor changes in style.

Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (3), the Code Commissioner has made the change and corrected the subsection reference to 53-20-102 pursuant to sec. 73, Ch. 18, L. 1995.

Chapter 546 in (2), in two places, and in (5), in two places, substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of public health and human services, the prosecution, or the defendant or the defendant's legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of public health and human services.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 8, Ch. 713, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 160, Ch. 800, L. 1991; amd. Sec. 205, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in two places substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Part 3

Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the director of the department of public health and human services must have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person must be discharged or released or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(a) serious bodily injury or death to the person or others;

(b) an imminent threat of physical injury to the person or others; or

(c) substantial property damage.

(4) According to the determination of the court upon the hearing, the person must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility for custody, care, and treatment.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of public health and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3).

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(1); amd. Sec. 9, Ch. 713, L. 1979; amd. Sec. 2, Ch. 593, L. 1981; amd. Sec. 4, Ch. 361, L. 1983; amd. Sec. 161, Ch. 800, L. 1991; amd. Sec. 2, Ch. 397, L. 1993; amd. Sec. 206, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2)(a), (3), (4), and (5) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

46-14-302. Discharge or release upon motion of director. (1) If the director of the department of public health and human services believes that a person committed to the director's custody under 46-14-301 may be discharged or released on condition without danger to the person or others because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage, the director shall make application for the discharge or release of the person in a report to the district court by which the person was committed unless that court transfers jurisdiction to the court in the district in which the person has been placed and shall send a copy of the application and report to the prosecutor of the county from which the person was committed.

(2) Either the director of the department of public health and human services or the person may also make application to the court for discharge or release as part of the person's annual treatment review.

(3) The court shall then appoint at least one person who is either a qualified psychiatrist or licensed clinical psychologist to examine the person and to report as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any mental health facility located near the place where the court sits that may be designated by the director of the department of public health and human services as suitable for the temporary detention of persons suffering from mental disease or defect.

(4) The committed person or the person's attorney may secure a professional person of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, the court shall appoint an additional professional person to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available professional person qualified to perform the requested examination. The professional person must be compensated by the department of public health and human services.

(5) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist or licensed clinical psychologist that the committed person may be discharged or released on condition because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage, the court shall order the person's discharge.

(6) (a) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released on the grounds that the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(b) A hearing is considered a civil proceeding, and the burden is upon the state to prove by clear and convincing evidence that the person may not be safely discharged or released because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in this section and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(2), (3); amd. Sec. 15, Ch. 116, L. 1979; amd. Sec. 5, Ch. 361, L. 1983; amd. Sec. 5, Ch. 127, L. 1987; amd. Sec. 162, Ch. 800, L. 1991; amd. Sec. 3, Ch. 397, L. 1993; amd. Sec. 207, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), (2), (3), (4), and (6)(c) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

46-14-303. Application for discharge or release by committed person. A committed person may make application for discharge or release to the district court by which the person was committed unless that court transfers jurisdiction to the court in the district in which the person has been placed, and the procedure to be followed upon the application is the same as that prescribed in 46-14-302 in the case of an application by the director of the department of public health and human services. However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(5); amd. Sec. 6, Ch. 361, L. 1983; amd. Sec. 163, Ch. 800, L. 1991; amd. Sec. 4, Ch. 397, L. 1993; amd. Sec. 208, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 near end of first sentence substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

46-14-304. Revocation of conditional release. (1) The court may order revocation of a person's conditional release if the court determines after hearing evidence that:

(a) the conditions of release have not been fulfilled; and

(b) based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

(3) If the court finds that the conditional release should be revoked, the court shall immediately order the person to be recommitted to the custody of the director of the department of public health and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(4); amd. Sec. 16, Ch. 116, L. 1979; amd. Sec. 7, Ch. 361, L. 1983; amd. Sec. 164, Ch. 800, L. 1991; amd. Sec. 5, Ch. 397, L. 1993; amd. Sec. 209, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (3) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

46-14-305 through 46-14-310 reserved.

46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and claims that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206.

History: En. Sec. 10, Ch. 713, L. 1979; amd. Sec. 165, Ch. 800, L. 1991.

Cross-References

Admissibility of statements made during examination or treatment, 46-14-217.

46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant, in an appropriate correctional or mental health facility for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after considering the recommendations of the professionals providing treatment to the defendant, subsequently transfer the defendant to another correctional or mental health facility that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if

the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

(c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or others; or

(d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the defendant or others, but:

(i) there is no treatment available for the mental disease or defect;

(ii) the defendant refuses to cooperate with treatment; or

(iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

History: En. Sec. 11, Ch. 713, L. 1979; amd. Sec. 1, Ch. 267, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 166, Ch. 800, L. 1991; amd. Sec. 28, Ch. 262, L. 1993; amd. Sec. 6, Ch. 397, L. 1993; amd. Sec. 1, Ch. 256, L. 1995; amd. Sec. 210, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 256 in (2), in first sentence after "placed", inserted clause requiring consideration of recommendations of professionals providing treatment to defendant and substituted "correctional or mental health facility" for "institution" and inserted second sentence allowing Director to transfer defendant to facility that will better serve defendant's needs.

Chapter 546 in (2), in first sentence, substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

46-14-313. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312, the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

History: En. Sec. 12, Ch. 713, L. 1979; amd. Sec. 167, Ch. 800, L. 1991.

Part 4
Privileged Communications

46-14-401. Renumbered 46-14-217 by Code Commissioner, 1991.

CHAPTER 15

PRODUCTION OF EVIDENCE

Part 1 — Subpoenas and Witnesses

46-15-101. Subpoenas.
46-15-102. Renumbered 46-15-107 by Code Commissioner, 1991.
46-15-103. Renumbered 46-15-115 by Code Commissioner, 1991.
46-15-104. Renumbered 46-15-116 by Code Commissioner, 1991.
46-15-105. Persons imprisoned in state prison or in another county.
46-15-106. Subpoenas for production of evidence.
46-15-107. Service of subpoenas.
46-15-108 through 46-15-110 reserved.
46-15-111. Repealed.
46-15-112. Subpoena of witness in this state to testify in another state.
46-15-113. Subpoena of witness in another state to testify in this state.
46-15-114. Renumbered 46-15-120 by Code Commissioner, 1991.
46-15-115. Subpoena for witness when defendant unable to pay.
46-15-116. Fees, costs, and expenses.
46-15-117 through 46-15-119 reserved.
46-15-120. Exemption from arrest and service of process.

Part 2 — Depositions

46-15-201. When depositions may be taken.
46-15-202. Procedure for taking depositions.
46-15-203. Repealed.
46-15-204. Use of depositions at trial.

Part 3 — Discovery—Immunity for Witnesses

46-15-301. Repealed.
46-15-302. Repealed.
46-15-303. Repealed.
46-15-304 through 46-15-310 reserved.
46-15-311. Renumbered 46-15-331 by Code Commissioner, 1985.
46-15-312. Renumbered 46-15-332 by Code Commissioner, 1985.
46-15-313 through 46-15-320 reserved.
46-15-321. Repealed.
46-15-322. Disclosure by prosecution.
46-15-323. Disclosure by defendant.
46-15-324. Materials not subject to disclosure.
46-15-325. Failure to call a witness or raise a defense.
46-15-326. Use of materials.
46-15-327. Continuing duty to disclose.
46-15-328. Excision and protective orders.
46-15-329. Sanctions.
46-15-330. Investigation not to be impeded.
46-15-331. Compelling testimony or production of evidence — immunity.
46-15-332. Privileged matters.

Part 4 — Evidence in Cases Involving Sexual Offenses

46-15-401. Repealed.
46-15-402. Procedure at videotaping.
46-15-403. Court order to protect privacy of victim.
46-15-404 through 46-15-410 reserved.
46-15-411. Payment for medical evidence.

Part 1
Subpoenas and Witnesses

Part Cross-References

Rights of accused — compulsory process, Art. II, sec. 24, Mont. Const.

Criminal process on United States land, Title 2, ch. 1, part 2; 2-1-307.

District Court Clerk's duties — record of witnesses, 3-5-510.

District Court Clerk's duties — witness certificate, 3-5-511.

Sections granting immunity to witnesses, 5-5-105, 7-3-4365, 13-36-208, 25-14-106, 26-2-302, 33-1-316, 40-6-111, 69-14-113.

Witness fees, courts of record, 26-2-501.

Investigative subpoenas, Title 46, ch. 4, part 3.

46-15-101. Subpoenas. (1) After the filing of charges and upon the request of the prosecuting attorney, the defendant, or the defendant's attorney, the clerk of the court shall issue subpoenas with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony. The court shall maintain a list of the names of the persons to whom subpoenas are issued.

(2) A subpoena must state the name of the court and the title, if any, of the proceeding and must command each person to whom it is directed to attend and give testimony at the time and place specified in the subpoena. The time and place may be modified by mutual written agreement of the parties or by an amended subpoena issued by the clerk of the court.

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive.

(4) A subpoena remains in effect unless quashed or until judgment, dismissal, or other final determination of the action by the court in which the action was filed or to which the action was transferred.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(a); amd. Sec. 180, Ch. 800, L. 1991; amd. Sec. 29, Ch. 262, L. 1993; amd. Sec. 2, Ch. 138, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 138 at end of (2) inserted sentence relating to modification by agreement or by amended subpoena; and inserted (4) providing that subpoena remains in effect unless quashed or until final determination of action.

Cross-References

Right to process to compel attendance of witnesses, Art. II, sec. 24, Mont. Const.

Subpoena defined, 26-2-101.

Deposition of prospective witness, Title 46, ch. 15, part 2.

46-15-102. Renumbered 46-15-107 by Code Commissioner, 1991.

46-15-103. Renumbered 46-15-115 by Code Commissioner, 1991.

46-15-104. Renumbered 46-15-116 by Code Commissioner, 1991.

46-15-105. Persons imprisoned in state prison or in another county. When it is necessary to have a person imprisoned in the state prison brought before any court or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made.

History: En. Sec. 2900, Pen. C. 1895; re-en. Sec. 9714, Rev. C. 1907; re-en. Sec. 12432, R.C.M. 1921; Cal. Pen. C. Sec. 1567; re-en. Sec. 12432, R.C.M. 1935; Sec. 94-701-1, R.C.M. 1947; redes. 95-1812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1812.

Cross-References

Securing testimony of witness who is a prisoner, Title 26, ch. 2, part 2.

46-15-106. Subpoenas for production of evidence. (1) A subpoena may command the person to whom it is directed to produce the books, papers, documents, or other objects designated in the subpoena.

(2) The court may direct that the books, papers, documents, or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered into evidence and may upon their production permit the books, papers, documents, or objects, or portions thereof, to be inspected by the parties and their attorneys.

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive.

History: En. Sec. 181, Ch. 800, L. 1991.

46-15-107. Service of subpoenas. (1) A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. A peace officer shall serve any subpoena delivered to the peace officer for service in the peace officer's county either on the part of the prosecution or of the defendant.

(2) Service of a subpoena must be made by delivering a copy of the subpoena to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed by law. The person making the service shall without delay make a written return of the service subscribed by the person, stating the time and place of service.

(3) A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the state of Montana.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(e), (f); amd. Sec. 182, Ch. 800, L. 1991; Sec. 46-15-102, MCA 1989; redes. 46-15-107 by Code Commissioner, 1991.

Cross-References

Witness fees, Title 26, ch. 2, part 5.

46-15-108 through 46-15-110 reserved.

46-15-111. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1808 by Sec. 8, Ch. 513, L. 1973; R.C.M. 1947, 95-1808.

46-15-112. Subpoena of witness in this state to testify in another state. (1) If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of the court that there is a criminal prosecution pending in the court or that a grand jury investigation is commenced or is about to commence, that a person being within this state is a material witness in the prosecution or a grand jury investigation, and that the person's presence will be required for a specified number of days, upon presentation of the certificate to any judge of a court of record in the county in which the person is located, the judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or a grand jury investigation is commenced or is about to commence will give

the witness protection from arrest and the service of civil and criminal process, the judge shall issue a subpoena with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation is commenced or is about to commence at a time and place specified in the subpoena. In the hearing, the certificate is prima facie evidence of all the facts stated in the certificate.

(3) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure the witness's attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be brought before the judge for the hearing. At the hearing, the judge may, in lieu of issuing a subpoena, order that the witness be taken into custody and delivered to an officer of the requesting state.

History: En. Sec. 2, Ch. 188, L. 1937; Sec. 94-9002, R.C.M. 1947; redes. 95-1809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1809; amd. Sec. 183, Ch. 800, L. 1991.

Cross-References

Punishment for disobeying summons, 46-6-212(1).

46-15-113. Subpoena of witness in another state to testify in this state. (1) Whenever a person in any state that by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation that is commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate must be presented to a judge of a court of record in the county in which the witness is found.

(2) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure the witness's attendance in this state, it is prima facie proof of the desirability of the custody and delivery, and the judge may direct that the witness be brought before the judge immediately. If the judge is satisfied as to the desirability of custody and delivery, the judge may order that the witness be immediately taken into custody and delivered to an officer of this state. The order is sufficient authority for the officer to take the witness into custody and hold the witness unless and until the witness is released by bail, recognizance, or order of the judge issuing the certificate.

(3) A witness who has appeared in accordance with the provisions of the subpoena may not be required to remain within this state for a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

(4) If the witness fails without good cause to attend and testify as directed, the witness must be punished in the manner provided for the punishment of any witness who disobeys an order issued from a court of record in this state in accordance with Title 3, chapter 1, part 5, or in accordance with 45-7-309.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949; Sec. 94-9003, R.C.M. 1947; redes. 95-1810 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 27, Ch. 184, L. 1977; R.C.M. 1947, 95-1810; amd. Sec. 184, Ch. 800, L. 1991.

Cross-References

Punishment for failure of defendant to appear upon summons, 46-6-212(1).

46-15-114. Renumbered 46-15-120 by Code Commissioner, 1991.

46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of the defendant and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent, a court order must be obtained if more than six witnesses are to be subpoenaed.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(b); amd. Sec. 185, Ch. 800, L. 1991; Sec. 46-15-103, MCA 1989; redes. 46-15-115 by Code Commissioner, 1991.

46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness shall receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of the court to pay the expenses from the appropriate city or county treasury.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

(4) According to procedures required by the supreme court administrator, under 3-5-902, the clerk of the district court shall submit to the administrator a detailed statement containing a list of witnesses and the amount of expenses paid to each witness by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for all or a portion of the witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in the district court fund.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(c); amd. Sec. 15, Ch. 680, L. 1985; amd. Sec. 9, Ch. 1, Sp. L. 1985; amd. Sec. 8, Ch. 704, L. 1991; amd. Sec. 186, Ch. 800, L. 1991; Sec. 46-15-104, MCA 1989; redes. 46-15-116 by Code Commissioner, 1991; amd. Sec. 30, Ch. 262, L. 1993; amd. Sec. 4, Ch. 330, L. 1993.

Cross-References

Mileage of witnesses, 2-18-503.

Witness fees — courts of record, 26-2-501.

46-15-117 through 46-15-119 reserved.

46-15-120. Exemption from arrest and service of process. (1) If a person comes into this state in obedience to a subpoena directing the person to attend and testify in this state, the person may not, while in this state pursuant to the subpoena or order, be subject to arrest or the service of process, civil or criminal, in connection with matters that arose before the person's entrance into this state under the subpoena.

(2) If a person passes through this state while going to another state in obedience to a subpoena or order to attend and testify in that state, the person may not, while passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters that arose before the person's entrance into this state under the subpoena.

History: En. Sec. 4, Ch. 188, L. 1937; Sec. 94-9004, R.C.M. 1947; redes. 95-1811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1811; amd. Sec. 187, Ch. 800, L. 1991; Sec. 46-15-114, MCA 1989; redes. 46-15-120 by Code Commissioner, 1991.

Cross-References

Witness protected from arrest when attending, going, and returning, 26-2-402.

Persons exempt from arrest, 46-6-102.

Part 2
Depositions

46-15-201. When depositions may be taken. (1) In district or municipal court cases, a deposition may be taken if it appears that a prospective witness:

(a) is likely to be either unable to attend or otherwise prevented from attending a trial or hearing;

(b) is likely to be absent from the state at the time of the trial or hearing; or

(c) is unwilling to provide relevant information to a requesting party and the witness's testimony is material and necessary in order to prevent a failure of justice. The court shall, upon motion of any party and proper notice, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be introduced at the time the deposition is taken.

(2) The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the court, taking into account the convenience of the parties and of the witness.

(3) If the defendant is charged with a felony and it appears upon the affidavit of counsel for a party that good cause exists to believe that a witness will not respond to a subpoena and the administration of justice requires, any district judge may issue an arrest warrant commanding the arrest of a material witness. The arrest warrant must further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of securing testimony in any criminal proceeding longer than is necessary to take the person's deposition.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(a); amd. Sec. 146, Ch. 800, L. 1991; amd. Sec. 31, Ch. 262, L. 1993.

Cross-References

Detention for purpose of securing testimony, Art. II, sec. 23, Mont. Const.

Recognizance by or deposition of witness, 46-11-601.

46-15-202. Procedure for taking depositions. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice must state the name and address of each person to be examined. On motion of the party upon whom the notice is served, the municipal or district court for cause shown may extend or shorten the time or change the place for taking the deposition.

(2) A deposition must be taken in the manner provided in civil actions. The court, upon request, may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. However, a deposition may not be taken of a party defendant without the defendant's consent, and the scope and manner of examination and cross-examination must be restricted as would be allowed in the trial itself.

(3) The deposition must be filed with the court making the order and held until the trial. Either party shall make available to the other party or the other party's counsel for examination and use at the taking of the deposition any relevant, nonprivileged statement of the witness being deposed that is in the possession of either party.

(4) Objections to deposition testimony or evidence or parts of the testimony or evidence may be reserved for subsequent determination by the court.

(5) Unless a defendant in custody has waived, in writing, the right to be present at the taking of a deposition, the officer having custody of the defendant must be notified of the time and place set for the deposition. The officer having custody shall produce the defendant and keep the defendant in the presence of a witness during the deposition.

(6) A defendant not in custody who fails to appear, without good cause, at the taking of a deposition after being notified of the time and place set for the deposition will be considered to have waived the right to be present as provided in 46-16-122. The waiver includes a waiver of any objection to the taking and use of the deposition based upon that right.

(7) Whenever a deposition is taken at the instance of the prosecution or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of taking a deposition, the court shall direct that the expense of travel and subsistence of the defendant and the defendant's counsel for attendance at the examination and the cost of the transcript of the deposition be paid by the city for a municipal court proceeding or by the state for a district court proceeding.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(b) thru (d); amd. Sec. 147, Ch. 800, L. 1991; amd. Sec. 32, Ch. 262, L. 1993.

Cross-References

How depositions taken, Rules 26, 28 through 32, M.R.Civ.P. (see Title 25, ch. 20).

46-15-203. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(g).

46-15-204. Use of depositions at trial. Any deposition may be used by any party for any purpose allowed by the Montana Rules of Evidence.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(e), (f); amd. Sec. 148, Ch. 800, L. 1991.

Cross-References

Objections to receiving deposition in evidence, Rules 30(c), 32, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Discovery — Immunity for Witnesses

46-15-301. Repealed. Sec. 11, Ch. 202, L. 1985.

History: En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(1), (3); amd. Sec. 14, Ch. 713, L. 1979; amd. Sec. 1, Ch. 557, L. 1981.

46-15-302. Repealed. Sec. 11, Ch. 202, L. 1985.

History: (1), (2)En. 95-1801 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1801, R.C.M. 1947; (3)En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; Sec. 95-1803, R.C.M. 1947; R.C.M. 1947, 95-1801(d), 95-1803(2); amd. Sec. 1, Ch. 496, L. 1979.

46-15-303. Repealed. Sec. 11, Ch. 202, L. 1985.

History: En. 95-1804 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1804.

46-15-304 through 46-15-310 reserved.

46-15-311. Renumbered 46-15-331 by Code Commissioner, 1985.

46-15-312. Renumbered 46-15-332 by Code Commissioner, 1985.

46-15-313 through 46-15-320 reserved.

46-15-321. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. Sec. 1, Ch. 202, L. 1985.

46-15-322. Disclosure by prosecution. (1) Upon request, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control:

(a) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case in chief;

(b) all written or oral statements of the defendant and of any person who will be tried with the defendant;

(c) all written reports or statements of experts who have personally examined the defendant or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons;

(d) all papers, documents, photographs, or tangible objects that the prosecutor may use at trial or that were obtained from or purportedly belong to the defendant; and

(e) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

(2) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within the prosecutor's control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the defendant was a party;

(b) whether an investigative subpoena has been executed in connection with the case; and

(c) whether the case has involved an informant and, if so, the informant's identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence and 46-15-324(3).

(3) The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under subsection (1)(d).

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion showing that the defendant has substantial need in the preparation of the case for additional material or information not otherwise provided for and that the defendant is unable, without undue hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The prosecutor may not be required to prepare or disclose summaries of witnesses' testimony.

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at a later time as the court may for good cause permit, together with their statements, a list of the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses to evidence of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity or the defense that the defendant did not have a particular state of mind that is an element of the offense charged.

History: En. Sec. 2, Ch. 202, L. 1985; amd. Sec. 137, Ch. 800, L. 1991; amd. Sec. 33, Ch. 262, L. 1993.

46-15-323. Disclosure by defendant. (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged, shall upon written request of the prosecutor and approval of the court:

(a) appear in a lineup;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of the defendant's hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions;

(g) provide handwriting samples; or

(h) submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, including all reports and statements concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless the defendant intends to use the privileged report or statement, or the witness who made it, at trial.

(5) Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown.

(6) Within 30 days after the arraignment or at a later time as the court may for good cause permit, the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case in chief, together with their statements;

(b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case; and

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony.

History: En. Sec. 3, Ch. 202, L. 1985; amd. Sec. 138, Ch. 800, L. 1991; amd. Sec. 1, Ch. 182, L. 1993; amd. Sec. 34, Ch. 262, L. 1993.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Notice of defense of mental disease or defect, 46-14-214.

46-15-324. Materials not subject to disclosure. (1) Except as provided in this section, disclosure is not required for the superseded notes or work product of the prosecuting or defense attorney.

(2) If exculpatory information is contained in the superseded notes or work product of the prosecution, that information must be disclosed.

(3) Disclosure of the existence of an informant or the identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to the informant's operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused.

History: En. Sec. 4, Ch. 202, L. 1985; amd. Sec. 139, Ch. 800, L. 1991; amd. Sec. 35, Ch. 262, L. 1993.

46-15-325. Failure to call a witness or raise a defense. The fact that a witness's name is on a list furnished pursuant to this part but the witness does not testify or that a matter contained in a pretrial notice is not raised may not be commented upon at trial unless the court, on motion of a party, allows comment after finding that the inclusion of the witness's name or the pretrial notice constituted an abuse of the applicable disclosure requirement or that other good cause is shown.

History: En. Sec. 5, Ch. 202, L. 1985; amd. Sec. 140, Ch. 800, L. 1991.

46-15-326. Use of materials. Except as provided in 46-11-401, any materials, including witness lists, furnished to an attorney pursuant to 46-15-322 through 46-15-329 may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case.

History: En. Sec. 6, Ch. 202, L. 1985; amd. Sec. 261, Ch. 800, L. 1991.

46-15-327. Continuing duty to disclose. If at any time after a disclosure has been made any party discovers additional information or material that would be subject to disclosure had it been known at the time of disclosure, the party shall promptly notify all other parties of the existence of the additional information or material and make an appropriate disclosure.

History: En. Sec. 7, Ch. 202, L. 1985; amd. Sec. 141, Ch. 800, L. 1991.

46-15-328. Excision and protective orders. (1) Upon a motion of any party showing good cause, the court may at any time order that any disclosure be deferred or regulated when it finds:

(a) that the disclosure would result in a risk or harm outweighing any usefulness of the unrestricted disclosure to any party; and

(b) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(2) Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable, it may authorize the party disclosing it to excise that portion of the material that is nondiscoverable and disclose the remainder.

(3) On motion of the party seeking a protective or excision order or in submitting for the court's determination the discoverability of any material or information, the court may permit that party to present the material or information for the inspection of the judge alone. Counsel for all other parties are entitled to be present when the presentation is made.

(4) If the court enters an order that any material or any portion of the material is not discoverable, the entire text of the material must be sealed and preserved in the record in the event of an appeal.

History: En. Sec. 8, Ch. 202, L. 1985; amd. Sec. 143, Ch. 800, L. 1991.

46-15-329. Sanctions. If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of this part or any order issued pursuant to this part, the court may impose any sanction that it finds just under the circumstances, including but not limited to:

(1) ordering disclosure of the information not previously disclosed;

(2) granting a continuance;

(3) holding a witness, party, or counsel in contempt for an intentional violation;

(4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; or

(5) declaring a mistrial when necessary to prevent a miscarriage of justice.

History: En. Sec. 9, Ch. 202, L. 1985; amd. Sec. 144, Ch. 800, L. 1991.

46-15-330. Investigation not to be impeded. Except as to matters to which discovery is restricted and except as to the defendant's counsel advising the defendant, a party or agent of a party may not discourage or obstruct communication between any person and any party or otherwise obstruct a party's investigation of the case.

History: En. Sec. 142, Ch. 800, L. 1991.

46-15-331. Compelling testimony or production of evidence — immunity. (1) Before or during trial in any judicial proceeding, a judge of the district or municipal court, upon request by the prosecutor or defense counsel, may require a person to answer any question or produce any evidence, even though personally incriminating, following a grant of immunity.

(2) If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, compelled testimony or evidence and any information directly or indirectly derived from such testimony or evidence may not be used against the witness in any criminal prosecution.

(3) Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if in the prosecutor's sole discretion it is determined that the ends of justice would be served.

(4) Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section.

History: En. 95-1807 by Sec. 7, Ch. 513, L. 1973; R.C.M. 1947, 95-1807; amd. Sec. 4, Ch. 577, L. 1983; Sec. 46-15-311, MCA 1983; redes. 46-15-331 by Code Commissioner, 1985; amd. Sec. 145, Ch. 800, L. 1991.

46-15-332. Privileged matters. All matters which are privileged upon the trial are privileged against disclosure through any discovery procedure.

History: En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(4); Sec. 46-15-312, MCA 1983; redes. 46-15-332 by Code Commissioner, 1985.

Part 4

Evidence in Cases Involving Sexual Offenses

Part Cross-References

Provisions generally applicable to sexual crimes, 45-5-511.

46-15-401. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1814 by Sec. 1, Ch. 384, L. 1977; R.C.M. 1947, 95-1814; amd. Sec. 1, Ch. 151, L. 1979; amd. Sec. 1, Ch. 8, L. 1983; amd. Sec. 1, Ch. 85, L. 1989.

46-15-402. Procedure at videotaping. (1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by this part.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under this part shall be allowed to attend the videotape proceedings.

History: En. 95-1815 by Sec. 2, Ch. 384, L. 1977; R.C.M. 1947, 95-1815.

46-15-403. Court order to protect privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: En. 95-1816 by Sec. 3, Ch. 384, L. 1977; R.C.M. 1947, 95-1816.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

46-15-404 through 46-15-410 reserved.

46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

History: En. 95-1813 by Sec. 1, Ch. 128, L. 1977; R.C.M. 1947, 95-1813.

Cross-References

Sexual intercourse without consent, 45-5-503.

CHAPTER 16

TRIAL

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Part 1

General Provisions

Part Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

County Attorney's records of criminal actions, 2-15-501, 7-4-2715.

Records of Attorney General, 2-15-501.

Courts and judicial officers, Title 3, ch. 1.

General rules governing procedure, Title 3, ch. 1, part 3.

Court actions permitted on nonjudicial days, 3-1-302.

District Courts, Title 3, ch. 5.

District Court records — criminal actions, 3-5-506.

District Court Clerk's duties — record of witnesses, 3-5-510.

Criminal contempt, 45-7-309.

46-16-101. Who given precedence on calendar. Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants on bail unless for good cause the court shall direct an action to be tried out of its order.

History: En. 95-1906 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1906.

46-16-102. Renumbered 46-16-110 by Code Commissioner, 1991.

46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty.

(2) Questions of law must be decided by the court and questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-110(3).

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(a), (b); amd. Sec. 17, Ch. 116, L. 1979; amd. Sec. 262, Ch. 800, L. 1991.

Cross-References

Jury decides questions of law and fact in suits for libel and slander, Art. II, sec. 7, Mont. Const.

Province of court and jury, Title 26, ch. 1, part 2.

46-16-104. Plea of not guilty. The plea of not guilty puts in issue every material allegation of the indictment, information, or complaint.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(e).

46-16-105. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(2) At any time before or after judgment the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

History: En. 95-1902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1902.

46-16-106. Time to prepare for trial. After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

History: En. 95-1907 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1907.

46-16-107. Repealed. Sec. 49, Ch. 262, L. 1993.

History: En. 95-1903 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1903.

46-16-108. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1904 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part).

46-16-109 reserved.

46-16-110. Right to jury trial — waiver. (1) The parties in a felony case have a right to trial by a jury of 12 persons.

(2) The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than that to which they are entitled.

(3) Upon written consent of the parties, a trial by jury may be waived.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(c), (d); amd. Sec. 188, Ch. 800, L. 1991; Sec. 46-16-102, MCA 1989; redes. 46-16-110 by Code Commissioner, 1991; amd. Sec. 1, Ch. 7, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 7 at beginning of (1) substituted "The parties" for "Defendants"; in (3) substituted "parties" for "defendant"; and made minor changes in style.

Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

Number of a trial jury, 3-15-106.

Trial juries in District Court, Title 3, ch. 15, part 5.

Jury trial of right, Rule 38, M.R.Civ.P. (see Title 25, ch. 20).

Selecting the jury, Title 46, ch. 16, part 1.

46-16-111. Formation of trial jury. (1) Trial juries in criminal cases are formed in the same manner as trial juries in civil cases.

(2) The qualifications of jurors and excuses from jury duty are prescribed in Title 3, chapter 15, part 3.

History: (1)En. 95-1905 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1905, R.C.M. 1947; (2)En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; Sec. 95-1909, R.C.M. 1947; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1905, 95-1909(2)(a); amd. Sec. 5, Ch. 51, L. 1981; amd. Sec. 2, Ch. 92, L. 1989; amd. Sec. 189, Ch. 800, L. 1991; Sec. 46-16-301, MCA 1989; redes. 46-16-111 by Code Commissioner, 1991.

Cross-References

Formation of the jury, Title 3, ch. 15, parts 3, 4, and 5; Title 25, ch. 7, part 2; Rule 47, M.R.Civ.P. (see Title 25, ch. 20).

46-16-112. Motion to discharge jury panel. (1) Any objection to the manner in which a jury panel has been selected or drawn must be raised by a motion to discharge the jury panel. Except for good cause shown, the motion must be made at least 5 days prior to the term for which the jury is drawn.

(2) The motion must be in writing supported by affidavit and must state facts that show that the jury panel was improperly selected or drawn.

(3) If the motion states facts that show that the jury panel has been improperly selected or drawn, it is the duty of the court to conduct a hearing. The burden of proof is on the movant.

(4) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

History: En. 95-1908 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1908; amd. Sec. 190, Ch. 800, L. 1991; Sec. 46-16-302, MCA 1989; redes. 46-16-112 by Code Commissioner, 1991.

46-16-113 reserved.

46-16-114. Examination of prospective jurors. (1) The clerk of court shall make available to the parties a list of prospective jurors with their questionnaires when the names have been drawn.

(2) The prosecutor and the defendant or the defendant's attorney shall conduct the examination of prospective jurors. The judge may conduct an additional examination. The judge may limit the examination by the defendant, the defendant's attorney, or the prosecutor if the examination is improper.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(1), (3); amd. Sec. 191, Ch. 800, L. 1991; Sec. 46-16-303, MCA 1989; redes. 46-16-114 by Code Commissioner, 1991.

46-16-115. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason that the court determines:

(a) having consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by the defendant in a criminal prosecution;

(d) having served on the grand jury that found the indictment or on a coroner's jury that inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury that tried another person for the offense charged or a related offense;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having any conscientious opinions concerning the punishment as would preclude finding the defendant guilty, in which case the person must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged; or

(j) having a state of mind in reference to the case or to either of the parties that would prevent the juror from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An excuse from service on a jury is not a cause of challenge but the privilege of the person excused.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(2)(b), (4); amd. Sec. 6, Ch. 51, L. 1981; amd. Sec. 192, Ch. 800, L. 1991; Sec. 46-16-304, MCA 1989; redes. 46-16-115 by Code Commissioner, 1991.

46-16-116. Peremptory challenges. (1) Each defendant is allowed eight peremptory challenges in capital cases and six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information.

(2) If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight.

(3) The state is allowed the same number of peremptory challenges as all of the defendants.

(4) In a criminal case tried before a six-person jury, the prosecution and all the defendants are allowed three peremptory challenges each.

(5) When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(6); amd. Sec. 193, Ch. 800, L. 1991; Sec. 46-16-305, MCA 1989; redes. 46-16-116 by Code Commissioner, 1991; amd. Sec. 36, Ch. 262, L. 1993.

46-16-117. Time for challenges. All challenges must be interposed before the jury is sworn unless the cause of challenge is discovered after the jury is sworn and before the introduction of any evidence, in which case the court, in its discretion, may allow the challenge to be interposed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(5); Sec. 46-16-306, MCA 1989; redes. 46-16-117 by Code Commissioner, 1991.

46-16-118. Alternate jurors. (1) The court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

(2) Each party shall have one additional peremptory challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the jury in

its deliberation unless called upon by the court to replace a member of the jury. An alternate juror's conduct during the period in which the jury is considering its verdict is regulated by instructions of the trial court. An alternate juror who does not replace a principal juror must be discharged after the jury arrives at its verdict.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(7); amd. Sec. 194, Ch. 800, L. 1991; Sec. 46-16-307, MCA 1989; redes. 46-16-118 by Code Commissioner, 1991.

46-16-119 reserved.

46-16-120. Misdemeanor offenses. In all cases in which the defendant is charged with a misdemeanor offense, the defendant may appear by counsel only, although the court may require the personal attendance of the defendant at any time.

History: En. Sec. 125, Ch. 800, L. 1991.

46-16-121. Felony offenses. (1) Except as otherwise provided in Title 46, the defendant in all cases in which a felony is charged must be present at the initial appearance, arraignment, entry of plea, preliminary examination, trial, and sentencing or when otherwise required by the court.

(2) The defendant may be present at all other proceedings.

(3) The presence of the defendant is not required before the supreme court.

History: En. Sec. 126, Ch. 800, L. 1991.

46-16-122. Absence of defendant from trial. (1) In a misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

(2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more of the following:

(a) order a continuance;

(b) order bail forfeited;

(c) issue an arrest warrant; or

(d) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

(3) After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant:

(a) has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom; or

(b) is voluntarily absent and the offense is not one that is punishable by death.

(4) Nothing in this section limits the right of the court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity.

History: En. Sec. 127, Ch. 800, L. 1991; amd. Sec. 37, Ch. 262, L. 1993.

46-16-123. Absence of defendant on receiving verdict or at sentencing. (1) In all misdemeanor cases, the verdict may be returned and the sentence imposed without the defendant being present.

(2) In all felony cases, the defendant shall appear in person when the verdict is returned or the sentence is imposed unless, after the exercise of due diligence to procure the defendant's presence, the court finds that it is in the interest of justice that the verdict be returned and the sentence be pronounced in the defendant's absence.

History: En. Sec. 128, Ch. 800, L. 1991.

46-16-124 through 46-16-129 reserved.

46-16-130. Pretrial diversion. (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(i) that the defendant may not commit any offense;

(ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court.

(3) A prosecution for a violation of 61-8-401, 61-8-406, or 61-8-410 may not be deferred.

History: En. Sec. 129, Ch. 800, L. 1991; amd. Sec. 38, Ch. 262, L. 1993; amd. Sec. 4, Ch. 447, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 447 inserted (3) concerning not deferring certain alcohol-related driving offenses.

Part 2

Rules of Evidence for Criminal Cases

Part Cross-References

Rights of accused — self-incrimination, Art. II, sec. 25, Mont. Const.

Evidence, Title 26.

Nonapplicability of privileges — abused, neglected, and dependent children, 41-3-404.

Extrajudicial confession — evidence of death, 45-5-111.

Inference of mental state, 45-5-112.

Evidence in trial for rape, 45-5-503.

Evidence in trial for promoting prostitution, 45-5-602 through 45-5-604.

Evidence in trial for endangering welfare of children, 45-5-622.

Perjured testimony, 45-7-201.

Perjury and false swearing — evidence required for conviction, 45-7-201, 45-7-202.

Tampering with witnesses, 45-7-206.

Tampering with physical evidence, 45-7-207.

Evidence in prosecution for obscenity, 45-8-201.

Criminal defamation — evidence required for conviction, 45-8-212.

Presumptions — possession of machine gun, 45-8-305.

Evidence — possession of machine gun, 45-8-306.

Blood, breath, and urine tests as evidence — driving while intoxicated, 61-8-403, 61-8-404.

46-16-201. Applicability of rules of evidence and civil rules. The Montana Rules of Evidence and the statutory rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided.

History: En. Sec. 2078, Pen. C. 1895; re-en. Sec. 9279, Rev. C. 1907; re-en. Sec. 11977, R.C.M. 1921; Cal. Pen. C. Sec. 1102; re-en. Sec. 11977, R.C.M. 1935; Sec. 94-7209, R.C.M. 1947; redes. 95-3001 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3001; amd. Sec. 195, Ch. 800, L. 1991.

Cross-References

Evidence, Title 26.

Spousal privilege inapplicable in criminal action by one against the other, 26-1-802.

46-16-202. Evidence on trial for treason. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act or upon confession in open court, nor can evidence be admitted of an overt act not expressly charged in the indictment or information, nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

History: En. Sec. 169, p. 243, Bannack Stat.; re-en. Sec. 294, p. 235, Cod. Stat. 1871; re-en. Sec. 294, 3d Div. Rev. Stat. 1879; re-en. Sec. 295, 3d Div. Comp. Stat. 1887; en. Sec. 2079, Pen. C. 1895; re-en. Sec. 9280, Rev. C. 1907; re-en. Sec. 11978, R.C.M. 1921; Cal. Pen. C. Sec. 1103; re-en. Sec. 11978, R.C.M. 1935; Sec. 94-7210, R.C.M. 1947; redes. 95-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3002.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

46-16-203. Renumbered 45-5-111 and 45-5-112 by Code Commissioner, 1983.

46-16-204. Defendant presumed innocent — reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether the defendant's guilt is satisfactorily shown, the defendant must be found not guilty.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 307, 3d Div. Rev. Stat. 1879; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2072, Pen. C. 1895; re-en. Sec. 9273, Rev. C. 1907; re-en. Sec. 11971, R.C.M. 1921; Cal. Pen. C. Sec. 1096; re-en. Sec. 11971, R.C.M. 1935; Sec. 94-7203, R.C.M. 1947; redes.

95-2901 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2901; amd. Sec. 196, Ch. 800, L. 1991; Sec. 46-16-601, MCA 1989; redes. 46-16-204 by Code Commissioner, 1991.

Cross-References

Instructions to jury on standard of proof to meet burden of persuasion, 26-1-403.

Disputable presumption of innocence, 26-1-602.

46-16-205 through 46-16-210 reserved.

46-16-211. Who are competent witnesses. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

History: En. Sec. 2440, Pen. C. 1895; re-en. Sec. 9482, Rev. C. 1907; re-en. Sec. 12175, R.C.M. 1921; Cal. Pen. C. Sec. 1321; re-en. Sec. 12175, R.C.M. 1935; Sec. 94-8801, R.C.M. 1947; redes. 95-3010 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3010.

Cross-References

Competency of witnesses, Art. VI, M.R.Ev. (see Title 26, ch. 10).

46-16-212. Competency of spouses. (1) Neither spouse may testify to the communications or conversations between spouses that occur during their marriage unless:

(a) consent of the defendant-spouse is obtained;

(b) the defendant-spouse has been charged with an act of criminal violence against the other; or

(c) the defendant-spouse has been charged with abuse, abandonment, or neglect of the other spouse or either spouse's children.

(2) Except as provided in subsection (1), a spouse is a competent witness for or against the other spouse.

History: En. Sec. 2441, Pen. C. 1895; re-en. Sec. 9483, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1915; re-en. Sec. 12176, R.C.M. 1921; Cal. Pen. C. Sec. 1322; re-en. Sec. 12176, R.C.M. 1935; Sec. 94-8802, R.C.M. 1947; redes. 95-3011 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 50, Ch. 184, L. 1977; R.C.M. 1947, 95-3011; amd. Sec. 197, Ch. 800, L. 1991.

Cross-References

Spousal privilege, 26-1-802.

46-16-213. Testimony of person legally accountable. A person may not be found guilty of an offense on the testimony of one responsible or legally accountable for the same offense, as defined in 45-2-301, unless the testimony is corroborated by other evidence that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense.

History: En. 95-3012 by Sec. 13, Ch. 513, L. 1973; amd. Sec. 51, Ch. 184, L. 1977; R.C.M. 1947, 95-3012; amd. Sec. 198, Ch. 800, L. 1991.

46-16-214 reserved.

46-16-215. Use of confession. Before an extrajudicial confession of the defendant to the crime charged may be admitted into evidence, the prosecution shall introduce independent evidence tending to establish the commission of the crime charged.

History: En. Sec. 199, Ch. 800, L. 1991.

46-16-216. Videotaped testimony. (1) For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-507 or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age, the testimony of the victim, at the request of the victim and with the concurrence of the prosecutor, may be recorded by means of videotape for presentation at trial. The recorded testimony may be presented at trial and must be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

(2) The procedural and evidentiary rules of the state that are applicable to criminal trials within the state apply to the videotape proceedings authorized by this section.

(3) The district court judge, the prosecutor, the victim, the defendant, the defendant's attorney, and other persons as are considered necessary by the court to make the recordings authorized under this section must be allowed to attend the videotape proceedings.

(4) Videotapes that are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: En. Sec. 200, Ch. 800, L. 1991; amd. Sec. 2, Ch. 288, L. 1991.

Part 3

Selecting the Jury (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

46-16-301. Renumbered 46-16-111.
46-16-302. Renumbered 46-16-112.
46-16-303. Renumbered 46-16-114.
46-16-304. Renumbered 46-16-115.
46-16-305. Renumbered 46-16-116.
46-16-306. Renumbered 46-16-117.
46-16-307. Renumbered 46-16-118.

Part 4

Order of Trial

46-16-401. Order of trial. (1) After the jury is sworn but before the introduction of any evidence, the court may give the jury general instructions concerning the conduct of the trial. The court shall give the jury such cautionary instructions as may be required during the course of the trial.

(2) The prosecutor may make an opening statement and shall offer evidence in support of the prosecution. The defendant may make an opening statement prior to the prosecutor's offer of evidence or at the close of the prosecution's case but prior to the defendant's offer of evidence.

(3) The prosecutor and the defendant may, respectively, offer rebutting testimony only. However, the court, for good cause, may permit either party to offer evidence upon the original case at any time before the close of evidence.

(4) Prior to final arguments, the court shall inform the parties as to the instructions that will be given and read them to the jury.

(5) A written copy of the instructions, both general and special, must be delivered to the jury for its consideration during deliberations following the final arguments.

History: En. 95-1910 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 420, L. 1975; R.C.M. 1947, 95-1910; amd. Sec. 201, Ch. 800, L. 1991.

46-16-402. When order may be departed from. For good cause shown and in the discretion of the court, the order prescribed in 46-16-401 may be departed from.

History: **En. 95-1911 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1911; amd. Sec. 202, Ch. 800, L. 1991.**

46-16-403. Evidence insufficient to go to jury. When, at the close of the prosecution's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may, on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, prior to dismissal, the court may allow the case to be reopened for good cause shown.

History: **En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(9); amd. Sec. 203, Ch. 800, L. 1991.**

46-16-404 through 46-16-409 reserved.

46-16-410. Settlement of jury instructions. (1) Any party may request special jury instructions. All requests for instructions must conform to the Uniform District Court Rules, and all instructions must be settled by the court out of the presence of the jury.

(2) A record must be made at the settlement of instructions.

(3) A party may not assign as error any portion of the instructions or omission from the instructions unless an objection was made specifically stating the matter objected to, and the grounds for the objection, at the settlement of instructions.

(4) The presence of the defendant is not required during the settlement of instructions.

History: **En. Sec. 204, Ch. 800, L. 1991.**

Part 5

Conduct of Jury

46-16-501. Conduct of jury during trial. (1) The jurors sworn to try an action may at any time, in the discretion of the court, be permitted to separate or be ordered to remain sequestered in the charge of a proper officer. If sequestered, the officer must be sworn to keep the jurors together, to allow no person to communicate with the jury or to personally communicate with the jury on any subject connected with the trial, and to return the jury into court as directed.

(2) Whether permitted to separate or sequestered, at each adjournment of the court, the jurors must be admonished that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial or to form or express any opinion on the trial until the cause is finally submitted to them.

(3) In all cases appealed to the supreme court, it must be conclusively considered that the court or judge gave the proper admonition in accordance with the provision of subsection (2) unless the record affirmatively shows the contrary.

History: **En. 95-1904, 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part), 95-1913(a), (e); amd. Sec. 205, Ch. 800, L. 1991.**

46-16-502. View of relevant place or property. When the court considers it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff to view the place or personal property in the presence of the court, the prosecutor, the defendant, and the defendant's counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the place or personal property. The sheriff or bailiff must be sworn to allow no person to speak or otherwise communicate with the jury or to personally communicate with the jury on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct.

History: En. 95-1912 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1912; amd. Sec. 206, Ch. 800, L. 1991.

Cross-References

View by jury of premises, 25-7-401.

46-16-503. Conduct of jury after retirement — advice from court. (1) When the jury retires to consider its verdict, an officer of the court must be appointed to keep the jurors together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the officer appointed to keep them together, who shall then notify the court. The information requested may be given, in the discretion of the court, after consultation with the parties.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(b), (d); amd. Sec. 18, Ch. 116, L. 1979; amd. Sec. 207, Ch. 800, L. 1991.

Cross-References

Conduct of jury after case submitted to it, 25-7-403.

Jury's request for further information, 25-7-405.

46-16-504. Items that may be taken into jury room. Upon retiring for deliberation, the jurors may take with them the written jury instructions read by the court, notes of the proceedings taken by themselves, and all exhibits that have been received as evidence in the cause that in the opinion of the court will be necessary.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(c); amd. Sec. 208, Ch. 800, L. 1991.

Cross-References

Papers which may be taken into jury room, 25-7-404.

46-16-505. Activity of court during jury's absence. While the jury is absent, the court may adjourn or conduct other business, but it must be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

History: En. 95-1914 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1914; amd. Sec. 209, Ch. 800, L. 1991.

Part 6

Verdict — Disposition of Defendant

Part Cross-References

Treason — requirements for conviction, Art. II, sec. 30, Mont. Const.

Evidence sufficient for conviction — Alcoholic Beverage Code, 16-6-205.

Requirements for conviction — criminal defamation, 45-8-212.

46-16-601. Renumbered 46-16-204 by Code Commissioner, 1991.

46-16-602. Renumbered 46-16-606 by Code Commissioner, 1991.

46-16-603. Form of verdict. (1) The jury shall return a verdict as instructed by the court. The verdict must be unanimous in all criminal actions. The verdict must be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; Sec. 95-1909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; Sec. 95-1915, R.C.M. 1947; R.C.M. 1947, 95-1909(8), 95-1915(1) thru (3); amd. Sec. 210, Ch. 800, L. 1991.

Cross-References

Right to unanimous verdicts, Art. II, sec. 26, Mont. Const.

46-16-604. Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

History: En. 95-1915 by Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; R.C.M. 1947, 95-1915(4).

46-16-605. Verdict of not guilty — when defendant discharged. If a verdict of not guilty is returned and the defendant is not detained for any other legal cause, the defendant must be discharged as soon as the judgment is given.

History: En. 95-1916 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1916; amd. Sec. 211, Ch. 800, L. 1991.

46-16-606. Reasonable doubt as to which offense convicts only of least offense. When it appears beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he is guilty of a given offense or one or more lesser included offenses, he may only be convicted of the greatest included offense about which there is no reasonable doubt.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2073, Pen. C. 1895; re-en. Sec. 9274, Rev. C. 1907; re-en. Sec. 11972, R.C.M. 1921; Cal. Pen. C. Sec. 1097; re-en. Sec. 11972, R.C.M. 1935; Sec. 94-7204, R.C.M. 1947; redes. 95-2902 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 48, Ch. 184, L. 1977; R.C.M. 1947, 95-2902; Sec. 46-16-602, MCA 1989; redes. 46-16-606 by Code Commissioner, 1991.

Cross-References

Instructions to jury on standard of proof required to meet burden of persuasion, 26-1-403.

46-16-607. Conviction of lesser included offense. (1) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

(2) A lesser included offense instruction must be given when there is a proper request by one of the parties and the jury, based on the evidence, could be warranted in finding the defendant guilty of a lesser included offense.

(3) When a lesser included offense instruction is given, the court shall instruct the jury that it must reach a verdict on the crime charged before it may proceed to a lesser included offense. Upon request of the defendant at the settling of instructions, the court shall instruct the jury that it may consider the lesser included offense if it is unable after reasonable effort to reach a verdict on the greater offense.

History: **En. Sec. 212, Ch. 800, L. 1991.**

Part 7

Motion for a New Trial

46-16-701. Effect of new trial. The granting of a new trial places the parties in the same position as if there had been no trial.

History: **En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(1); amd. Sec. 213, Ch. 800, L. 1991.**

Cross-References

Error in instruction as ground for new trial, 46-16-401.

46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial must be in writing and must specify the grounds for a new trial. The motion must be filed by the defendant within 30 days following a verdict or finding of guilty and be served upon the prosecution.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty.

History: **En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(2); amd. Sec. 19, Ch. 116, L. 1979; amd. Sec. 214, Ch. 800, L. 1991.**

Cross-References

Scope of appeal by state, 46-20-103.

CHAPTER 17

LOWER COURT PROCEEDINGS

Part 1 — Preliminary Matters—Justices' and City Courts

46-17-101. Repealed.
46-17-102. Record of proceedings.
46-17-103. Repealed.

Part 2 — The Trial—Justices' and City Courts

46-17-201. Juries in misdemeanor cases.
46-17-202. Formation of trial jury for justices', municipal, and city courts.
46-17-203. Plea of guilty.
46-17-204. Repealed.
46-17-205. Repealed.
46-17-206 through 46-17-210 reserved.
46-17-211. Repealed.

Part 3 — Procedure After Trial—Justices' and City Courts

46-17-301. Repealed.
46-17-302. Execution of judgment.
46-17-303. Deposit of fines.
46-17-304. Disposition of fines for city ordinance violations when appealed.
46-17-305 through 46-17-310 reserved.
46-17-311. Appeal from justices', municipal, and city courts.

Part 4 — Procedure in Municipal Court

46-17-401. Applicability of district court rules.
46-17-402. Fees and fines.
46-17-403. Jury trial.
46-17-404. Appeals.

Chapter Cross-References

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Part 1
Preliminary Matters — Justices' and City Courts

Part Cross-References

Duty of police chief in regard to City Court, 7-32-4105.

46-17-101. Repealed. Sec. 49, Ch. 262, L. 1993.

History: En. 95-2001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2001; amd. Sec. 2, Ch. 62, L. 1981.

46-17-102. Record of proceedings. A docket must be kept by the justice of the peace or city judge, in which must be entered each action and the proceedings of the court therein.

History: En. 95-2002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2002.

46-17-103. Repealed. Sec. 49, Ch. 262, L. 1993.

History: En. 95-2003 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 420, L. 1975; R.C.M. 1947, 95-2003.

Part 2
The Trial — Justices' and City Courts

Part Cross-References

General rules governing proceedings, Title 3, ch. 1, part 3.

Trial jury defined, 3-15-104.

Number of jury — Justices' Courts, 3-15-107.

Jury fees — courts not of record, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries in courts of limited jurisdiction — summoning and impaneling, Title 3, ch. 15, part 7.

Witness fees — courts not of record, 26-2-503.

46-17-201. Juries in misdemeanor cases. (1) The parties in a misdemeanor case are entitled to a jury of six qualified persons but may agree to a number less than six at any time before the verdict.

(2) Upon consent of the parties, a trial by jury may be waived.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(1); amd. Sec. 215, Ch. 800, L. 1991; amd. Sec. 2, Ch. 7, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 7 in (1) and (2) substituted reference to parties for reference to defendant; and made minor changes in style.

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

46-17-202. Formation of trial jury for justices', municipal, and city courts. (1) At the time of preparing the district court jury list, the county commissioners and clerk and recorder shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be filed in the office of the clerk of the district court. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required.

History: En. 95-2005 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 420, L. 1975; amd. Sec. 31, Ch. 184, L. 1977; R.C.M. 1947, 95-2005; amd. Sec. 18, Ch. 379, L. 1983; amd. Sec. 216, Ch. 800, L. 1991.

Cross-References

Trial jury defined, 3-15-104.

Number of jury — Justices' Courts, 3-15-107.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries in courts of limited jurisdiction — summoning and impaneling, Title 3, ch. 15, part 7.

46-17-203. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of the plea.

(2) A plea of guilty in a justices' court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(2); amd. Sec. 3, Ch. 277, L. 1989.

46-17-204. Repealed. Sec. 49, Ch. 262, L. 1993.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(4).

46-17-205. Repealed. Sec. 49, Ch. 262, L. 1993.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(3).

46-17-206 through 46-17-210 reserved.

46-17-211. Repealed. Sec. 49, Ch. 262, L. 1993.

History: En. 95-2006 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 4, L. 1973; rep. and re-en. 95-2006 by Sec. 30, Ch. 513, L. 1973; amd. Sec. 32, Ch. 184, L. 1977; R.C.M. 1947, 95-2006.

Part 3

Procedure After Trial — Justices' and City Courts

Part Cross-References

Procedure on appeal — Alcoholic Beverage Code, 16-6-202.

Forfeiture of motor vehicle for third drug-related or alcohol-related conviction, 61-8-714, 61-8-722.

46-17-301. Repealed. Sec. 49, Ch. 262, L. 1993.

History: En. 95-2007 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 348, L. 1973; amd. Sec. 33, Ch. 184, L. 1977; R.C.M. 1947, 95-2007.

46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or policeman of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied in the proportion of 1 day's imprisonment for every $25 of the fine. When the judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter must return the execution to the judge within 30 days from its delivery to him and pay over to the judge the money collected, deducting his fees for the collection.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part); amd. Sec. 1, Ch. 270, L. 1989.

46-17-303. Deposit of fines. All fines imposed and collected by a city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days after the receipt of the same. The city judge must take duplicate receipts therefor, one of which he must deposit with the county, city, or town clerk, as the case may be.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part); amd. Sec. 29, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

46-17-304. Disposition of fines for city ordinance violations when appealed. All fines obtained from a judgment in a higher court on an appeal from a city court for violation of a city ordinance, tried de novo in the higher court, shall be paid to the county treasurer, who shall, before 31 days after receipt of the sum, forward one-half of the amount to the treasurer of the city in which the action originated.

History: En. Sec. 1, Ch. 32, L. 1967; R.C.M. 1947, 95-2008.1.

46-17-305 through 46-17-310 reserved.

46-17-311. Appeal from justices', municipal, and city courts. (1) Except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. An appeal from a municipal court to the district court is governed by 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date the order complained of is given. The prosecution may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

History: En. 95-2009 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 34, Ch. 184, L. 1977; amd. Sec. 55, Ch. 344, L. 1977; R.C.M. 1947, 95-2009; amd. Sec. 20, Ch. 116, L. 1979; amd. Sec. 1, Ch. 333, L. 1985; amd. Sec. 4, Ch. 277, L. 1989; amd. Sec. 217, Ch. 800, L. 1991; amd. Sec. 39, Ch. 262, L. 1993.

Cross-References

Appellate jurisdiction of District Court, 3-5-303.

City Attorney to prosecute appeals to District Court, 3-11-301.

Part 4

Procedure in Municipal Court

46-17-401. Applicability of district court rules. Except as otherwise provided by Title 3, chapter 6, and this part, the proceedings and practice in municipal court shall be the same as in district court.

History: En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; R.C.M. 1947, 11-1719(part).

46-17-402. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718.

46-17-403. Jury trial. In criminal causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

46-17-404. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court includes incarceration, no minimum amount in controversy may be required for appeal; and

(b) upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(1), (2).

CHAPTER 18

SENTENCE AND JUDGMENT

Part 1 — Policy and Preliminary Procedure

46-18-101. Correctional policy.
46-18-102. Rendering judgment and pronouncing sentence.
46-18-103. Sentence to be imposed by judge.
46-18-104. Definitions.
46-18-105. Community corrections facilities or programs.
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46-18-115. Sentencing hearing.
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46-18-117. Correction of sentence.
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46-18-130. Commission on sentencing.
46-18-131. Duties.
46-18-132. Sentencing guidelines.

Part 2 — Form of Sentence

46-18-201. Sentences that may be imposed.
46-18-202. Additional restrictions on sentence.
46-18-203. Revocation of suspended or deferred sentence.
46-18-204. Dismissal after deferred imposition.
46-18-205 through 46-18-210 reserved.
46-18-211. When no place of imprisonment is specified.
46-18-212. When no penalty is specified.
46-18-213. When no penalty is specified — felony.
46-18-214 through 46-18-218 reserved.
46-18-219. Life sentence without possibility of release.
46-18-220. Sentences for certain offenses committed in state prison — death penalty.
46-18-221. Additional sentence for offenses committed with a dangerous weapon.
46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.
46-18-223. Hearing to determine application of exceptions.

46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition.
46-18-225. Criteria for sentencing nonviolent felony offenders.
46-18-226 through 46-18-230 reserved.
46-18-231. Fines in felony and misdemeanor cases.
46-18-232. Payment of costs by defendant.
46-18-233. Fine or costs as a condition on suspended or deferred sentence.
46-18-234. When payment of fine or costs due.
46-18-235. Disposition of money collected as fines and costs.
46-18-236. Imposition of charge upon conviction or forfeiture — administration.
46-18-237 through 46-18-240 reserved.
46-18-241. Condition of restitution.
46-18-242. Investigation and report of victim's loss.
46-18-243. Definitions.
46-18-244. Type and time of payment — defenses.
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46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund.
46-18-251. Allocation of fines, costs, restitution, and other charges.
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46-18-254. Release of sexual or violent offender — duties of court and department.
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46-18-301. Hearing on imposition of death penalty.
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46-18-401. Consecutive sentences.
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46-18-601. Judgment in writing — lien.
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46-18-701. Parole during employment hours.
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46-18-902. Interested judge not to act.
46-18-903. Application for review.
46-18-904. Procedure upon review.
46-18-905. Decision — finality, report of.

Part 10 — Home Arrest

46-18-1001. Definitions.
46-18-1002. Home arrest — petition — agreement.
46-18-1003. Home arrest — conditions — fees — consent of cohabitors.
46-18-1004. Home arrest — ineligibility.
46-18-1005. Home arrest — responsibility for own living expenses — government benefits.
46-18-1006. Home arrest — list of offenders.

Part 1

Policy and Preliminary Procedure

46-18-101. Correctional policy. (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for the individual's actions, including, whenever possible, the restoration of all pecuniary losses sustained by a victim of the offense. Corrections laws and programs must be implemented to impress upon each individual the responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities. Finally, it is the policy of the state to recognize that the interests of crime victims should be considered so that, to the extent possible, victims of crime may be protected from threat of future harm by the offender.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed;

(iv) the criminal history of the offender; and

(v) consideration of alternatives to imprisonment of the offender in the state prison or the women's correctional system.

(b) Dangerous offenders who habitually violate the law and victimize the public must be removed from society and correctively treated in custody for long terms, as needed. Other offenders must be dealt with by probation, suspended sentence, community corrections, community service, or fine whenever the disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders must include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

(4) It is also the policy of the state that alternatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society.

History: En. 95-2201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2201; amd. Sec. 1, Ch. 533, L. 1983; amd. Sec. 2, Ch. 794, L. 1991; amd. Sec. 64, Ch. 10, L. 1993; amd. Sec. 6, Ch. 125, L. 1995; amd. Sec. 211, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 125 in (2), at end of second sentence, inserted phrase relating to restoration of pecuniary losses by victim and inserted last sentence relating to interests and protection of crime victims.

Chapter 546 in (3)(a)(v) substituted "women's correctional system" for "women's correctional center"; and made minor changes in style. Amendment effective July 1, 1995.

46-18-102. Rendering judgment and pronouncing sentence. (1) The judgment shall be rendered in open court.

(2) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his bail bond.

(3) (a) If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record his reasons for imposing the sentence.

History: En. 95-2202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2202; amd. Sec. 1, Ch. 46, L. 1983.

46-18-103. Sentence to be imposed by judge. All sentences under this chapter shall be imposed exclusively by the judge of the court.

History: En. 95-2212 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2212.

46-18-104. Definitions. As used in 46-18-101, 46-18-104, 46-18-105, 46-18-201, and 46-18-225, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) "Crime of violence" means:

(a) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(b) a crime in which the offender causes a serious bodily injury or death to a person other than himself; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence.

History: En. Sec. 1, Ch. 794, L. 1991; amd. Sec. 7(2), Ch. 794, L. 1991.

46-18-105. Community corrections facilities or programs. The department of corrections may provide community corrections facilities or programs for the rehabilitation of nonviolent felony offenders, as authorized under Title 53, chapter 30, part 3.

History: En. Sec. 5, Ch. 794, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 212, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

46-18-106 through 46-18-110 reserved.

46-18-111. *(Temporary)* **Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, or 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the investigation must include an evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive environment, considering community safety and offender needs. The evaluation must be completed by a person who is determined to be qualified under guidelines established by the department of corrections. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor.

46-18-111. *(Effective July 1, 1997)* **Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court shall consider the presentence investigation report prior to sentencing. If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, or 45-5-507 or under 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the investigation must include an evaluation of the defendant and a recommendation as to treatment of the offender in the least restrictive environment, considering community safety and offender needs, unless the defendant was sentenced under 46-18-219. The evaluation must be completed by a person who is determined to be qualified under guidelines established by the department of corrections. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the district court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the county or the state, or both, under Title 3, chapter 5, part 9.

(2) Unless the court makes a finding that a report is unnecessary, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor.

History: En. 95-2203 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2203; amd. Sec. 1, Ch. 173, L. 1985; amd. Sec. 2, Ch. 192, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 218, Ch. 800, L. 1991; amd. Sec. 40, Ch. 262, L. 1993; amd. Secs. 1, 2, Ch. 347, L. 1993; amd. Sec. 12, Ch. 482, L. 1995; amd. Sec. 213, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 482 in version effective July 1, 1997, in (1), at end of third sentence, inserted "unless the defendant was sentenced under 46-18-219"; and made minor changes in style.

Chapter 546 in (1), in fourth sentence, substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 46-18-111, enacted as sec. 12 of Senate Bill No. 66, are effective July 1, 1997.

46-18-112. Content of presentence investigation report. (1) Whenever an investigation is required, the probation officer shall promptly inquire into and report upon:

(a) the defendant's characteristics, circumstances, needs, and potentialities;

(b) the defendant's criminal record and social history;

(c) the circumstances of the offense;

(d) the time of the defendant's detention for the offenses charged;

(e) the harm caused, as a result of the offense, to the victim, the victim's immediate family, and the community; and

(f) the victim's pecuniary loss, if any. The officer shall make a reasonable effort to confer with the victim to ascertain whether the victim has sustained a pecuniary loss. If the victim is not available or declines to confer, the officer shall record that information in the report.

(2) All local and state mental and correctional institutions, courts, and law enforcement agencies shall furnish, upon request of the officer preparing a

presentence investigation, the defendant's criminal record and other relevant information.

(3) The court may, in its discretion, require that the presentence investigation report include a physical and mental examination of the defendant.

History: En. 95-2204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2204; amd. Sec. 219, Ch. 800, L. 1991; amd. Sec. 41, Ch. 262, L. 1993; amd. Sec. 7, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 inserted (1)(f) relating to victim's pecuniary loss; and deleted (4) that read: "(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and make a restitution report to the court as provided by law."

46-18-113. Availability of presentence investigation report. (1) All presentence investigation reports must be a part of the court record but may not be opened for public inspection. A copy of the presentence investigation report must be provided to the prosecution, the defendant and the defendant's attorney, and the agency or institution to which the defendant is committed. The prosecutor may disclose the contents of the presentence report to a victim of the offense.

(2) The court having jurisdiction of the case may permit other access to the presentence investigation report as it considers necessary.

History: En. 95-2205 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2205; amd. Sec. 220, Ch. 800, L. 1991; amd. Sec. 8, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 at end of (1) inserted last sentence allowing prosecutor to disclose contents of presentence report to victim.

46-18-114 reserved.

46-18-115. Sentencing hearing. Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the applicability of sentencing enhancement provisions, mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment.

History: En. Sec. 221, Ch. 800, L. 1991; amd. Sec. 9, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 inserted (4) requiring court to permit victim's statement at sentencing hearing and establishing procedures relating to the statement.

46-18-116. Judgment. The judgment must set forth the plea, verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The judgment must be signed and entered on the record.

History: En. Sec. 222, Ch. 800, L. 1991.

46-18-117. Correction of sentence. The court may correct an erroneous sentence or disposition at any time and may correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed or after remand from an appellate court.

History: En. Sec. 223, Ch. 800, L. 1991; amd. Sec. 42, Ch. 262, L. 1993.

46-18-118 through 46-18-129 reserved.

46-18-130. *(Temporary)* **Commission on sentencing.** (1) There is a commission on sentencing. The commission is allocated to the department of corrections for administrative purposes only, as provided in 2-15-121.

(2) The commission consists of:

(a) two members of the house of representatives, selected by the speaker of the house of representatives, no more than one of whom may be from the same political party;

(b) two members of the senate, selected by the president of the senate, no more than one of whom may be from the same political party;

(c) two district court judges selected by the chief justice of the Montana supreme court;

(d) the director of the department of corrections or the director's designee; and

(e) the following persons appointed by the governor:

(i) a county attorney;

(ii) a criminal defense attorney;

(iii) a probation and parole officer;

(iv) a county sheriff;

(v) a chief of police;

(vi) a member of the board of pardons;

(vii) an employee of the department of justice; and

(viii) two members of the public, one of whom must be a victim of a crime for which a sentence of death or of imprisonment for more than 1 year was imposed.

(3) Appointments under subsection (2) must be made within 60 days after March 31, 1995.

(4) The commission shall select a presiding officer from its members.

(5) The commission shall meet at least quarterly. *(Terminates May 31, 1997—sec. 5, Ch. 306, L. 1995.)*

History: En. Sec. 1, Ch. 306, L. 1995.

Compiler's Comments

Effective Date: Section 4, Ch. 306, L. 1995, provided that this section is effective on passage and approval. Approved March 31, 1995.

Termination: Section 5, Ch. 306, L. 1995, provided: "[This act] terminates May 31, 1997."

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

46-18-131. *(Temporary)* **Duties.** The commission may:

(1) collect and study data, studies, and research from public and private entities concerning sentencing processes and guidelines;

(2) publish or distribute material concerning sentencing processes, sentencing guidelines, sentences imposed, and the effect of those sentences;

(3) make recommendations to the 55th legislature concerning modification or enactment of sentencing and correctional statutes that the commission believes is necessary or advisable to carry out an effective, humane, and rational sentencing policy;

(4) make a recommendation to the 55th legislature as to whether the commission should be continued in existence;

(5) identify the impact of good time credits and sentencing guidelines on the criminal justice system; and

(6) make a recommendation to the 55th legislature concerning the advisability of good time credits. *(Terminates May 31, 1997—sec. 5, Ch. 306, L. 1995.)*

History: En. Sec. 2, Ch. 306, L. 1995.

Compiler's Comments

Effective Date: Section 4, Ch. 306, L. 1995, provided that this section is effective on passage and approval. Approved March 31, 1995.

Termination: Section 5, Ch. 306, L. 1995, provided: "[This act] terminates May 31, 1997."

46-18-132. *(Temporary)* **Sentencing guidelines.** (1) The commission shall determine the advisability of proposing advisory sentencing guidelines to the 55th legislature.

(2) If submitted to the legislature for consideration, the guidelines must specify:

(a) the range of sentences applicable to each crime;

(b) a range of sentences for a defendant previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon;

(c) variations from the range of applicable sentences due to aggravating or mitigating circumstances;

(d) the circumstances under which imprisonment of an offender is proper;

(e) a presumptive sentence for offenders for whom imprisonment is proper, based upon an appropriate evaluation of the crime committed, the prospects of rehabilitation of the offender, the circumstances under which the crime was committed, and the criminal history of the offender; and

(f) appropriate sanctions for an offender for whom imprisonment is not proper.

(3) In establishing the sentencing guidelines, the primary consideration of the commission must be public safety and the restoration of the victim. The commission shall also consider the prospects of rehabilitation, responsibility, and accountability of the offender; current sentencing and release practices; and correctional resources. *(Terminates May 31, 1997—sec. 5, Ch. 306, L. 1995.)*

History: En. Sec. 3, Ch. 306, L. 1995.

Compiler's Comments

Effective Date: Section 4, Ch. 306, L. 1995, provided that this section is effective on passage and approval. Approved March 31, 1995.

Termination: Section 5, Ch. 306, L. 1995, provided: "[This act] terminates May 31, 1997."

Part 2
Form of Sentence

Part Cross-References

Excessive sanctions, cruel and unusual punishment, Art. II, sec. 22, Mont. Const.

Punishments allowed — military courts, 10-1-401.

Determination of what sentence may be imposed, 45-1-201.

Rehabilitation instead of prosecution for addicts, 45-9-202.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-201. *(Temporary)* **Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

46-18-201. *(Effective July 1, 1997)* **Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) community service;

(x) home arrest as provided in Title 46, chapter 18, part 10;

(xi) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiii) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for placement in an appropriate correctional institution or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321; or

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of restitution to the victim as provided in 46-18-241 through 46-18-249. If the court determines that the defendant is unable to pay restitution, then it may impose, in addition to any other sentence, community service under 46-18-241.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or the women's correctional system, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

(12) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(1), (2), (4); amd. Sec. 21, Ch. 116, L. 1979; amd. Sec. 2, Ch. 322, L. 1979; amd. Sec. 2, Ch. 587, L. 1979; amd. Sec. 6, Ch. 198, L. 1981; amd. Sec. 1, Ch. 207, L. 1981; amd. Sec. 7, Ch. 415, L. 1981; amd. Sec. 1, Ch. 189, L. 1983; amd. Sec. 9, Ch. 581, L. 1983; amd. Sec. 1, Ch. 205, L. 1985; amd. Sec. 1, Ch. 524, L. 1985; amd. Sec. 104, Ch. 370, L. 1987; amd. Sec. 7, Ch. 610, L. 1987; amd. Sec. 1, Ch. 626, L. 1987; amd. Sec. 10, Ch. 293, L. 1989; amd. Sec. 2, Ch. 575, L. 1989; amd. Sec. 2, Ch. 42, L. 1991; amd. Sec. 10, Ch. 105, L. 1991; amd. Sec. 17, Ch. 554, L. 1991; amd. Sec. 2, Ch. 564, L. 1991; amd. Sec. 3, Ch. 794, L. 1991; amd. Sec. 5, Ch. 802, L. 1991; amd. Sec. 65, Ch. 10, L. 1993; amd. Sec. 43, Ch. 262, L. 1993; amd. Sec. 1, Ch. 365, L. 1993; amd. Sec. 3, Ch. 579, L. 1993; amd. Sec. 10, Ch. 125, L. 1995; amd. Sec. 5, Ch. 394, L. 1995; amd. Sec. 1, Ch. 407, L. 1995; amd. Sec. 13, Ch. 482, L. 1995; amd. Sec. 214, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 125 deleted former (1)(a)(iv) that read: "(iv) restitution"; inserted (2) requiring payment of restitution to victim or community service; and made minor changes in style.

Chapter 394 inserted (1)(a)(xii) concerning payment of expenses for the use of a judge pro tempore or special master; at end of (1)(a)(xiii) substituted "restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xii)" for "above"; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 407 in (9), after "sexual", inserted "or violent"; and made minor changes in style.

Chapter 482 in version effective July 1, 1997, in (10), near middle after "enroll in", inserted "and complete"; inserted (12) reconciling sentencing conflicts between 46-18-201, 46-18-219, and 46-18-222; and made minor changes in style.

Chapter 546 in (1)(e) substituted "department of corrections" for "department of corrections and human services"; in (11) substituted "women's correctional system" for "women's correctional center"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Applicability: Section 43, Ch. 125, L. 1995, provided: "[Sections 10 [46-18-201], 13 [46-18-241], and 21 [46-18-302]] apply to trials for and sentences imposed for crimes that were committed on or after [the effective date of this act]." Effective October 1, 1995.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 46-18-201, enacted as sec. 13 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Determination of what sentence may be imposed, 45-1-201.

Alternative sentencing authority, 45-9-202.

Death as a sentence that may be imposed, Title 46, ch. 18, part 3.

Sentencing of persistent felony offender, 46-18-502.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-202. Additional restrictions on sentence. (1) The court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of the defendant's owning or carrying a dangerous weapon;

(c) restrictions on the defendant's freedom of association;

(d) restrictions on the defendant's freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

(3) When the court imposes a sentence of probation, as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.

(4) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(3); amd. Sec. 22, Ch. 116, L. 1979; amd. Sec. 10, Ch. 583, L. 1981; amd. Sec. 2, Ch. 392, L. 1987; amd. Sec. 44, Ch. 262, L. 1993; amd. Sec. 11, Ch. 125, L. 1995; amd. Sec. 17, Ch. 350, L. 1995; amd. Sec. 6, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 125 near end of (1) and (1)(e) substituted "protection of the victim and society" for "protection of society"; and made minor changes in style.

Chapter 350 in (1) and (3), at beginning before "court", deleted "district"; deleted former (3) that read: "(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsection (1)(a)"; and made minor changes in style.

Chapter 550 inserted (4) allowing imposition of a restriction on eligibility for a good time allowance.

Cross-References

Effect of conviction — civil disabilities, 46-18-801.

Parole eligibility, 46-23-201.

Participation in furlough program, 46-23-411.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the defendant has violated any condition of a sentence or any condition of a deferred imposition of sentence, the court may issue an order for a hearing on revocation. The order must require the defendant to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer to arrest the defendant and bring the defendant before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the defendant must be brought before the court, and the defendant must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the defendant's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the defendant admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the defendant, and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the defendant for the purposes of this subsection (b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the defendant may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the defendant's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) If the court finds that the defendant has violated the terms and conditions of the suspended or deferred sentence, the court may:

(a) continue the suspended or deferred sentence without a change in conditions;

(b) continue the suspended sentence with modified or additional terms and conditions;

(c) revoke the suspension of sentence and require the defendant to serve either the sentence imposed or any lesser sentence; or

(d) if the sentence was deferred, impose any sentence that might have been originally imposed.

(8) If the court finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the defendant, if in custody, immediately released.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(5); amd. Sec. 1, Ch. 328, L. 1981; amd. Sec. 1, Ch. 204, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 224, Ch. 800, L. 1991; amd. Sec. 45, Ch. 262, L. 1993.

46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

History: En. 95-2207 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2207; amd. Sec. 1, Ch. 147, L. 1987; amd. Sec. 1, Ch. 463, L. 1989.

46-18-205 through 46-18-210 reserved.

46-18-211. When no place of imprisonment is specified. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed 1 year shall be to the county jail.

History: En. 95-2206.2 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.2.

46-18-212. When no penalty is specified. The court, in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed 6 months in the county jail or a fine not to exceed $500, or both.

History: En. 95-2206.3 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.3(part).

Cross-References

Classification of offenses, 45-1-201.

Definition of misdemeanor, 45-2-101.

Violation of Montana Elder Abuse Prevention Act misdemeanor, 52-3-825.

46-18-213. When no penalty is specified — felony. The court, in imposing sentence upon an offender convicted of an offense which is designated as a felony and no penalty is otherwise provided, may sentence the offender for any term not to exceed 10 years in the state prison or may fine the offender in an amount not to exceed $50,000 or may impose both such fine and imprisonment.

History: En. 95-2206.4 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.4; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Classification of offenses, 45-1-201.

Definition of felony, 45-2-101.

46-18-214 through 46-18-218 reserved.

46-18-219. *(Effective July 1, 1997)* **Life sentence without possibility of release.** (1) (a) Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202(1), aggravated assault;

(iii) 45-5-302, kidnapping;

(iv) 45-5-401, robbery.

(2) Except as provided in 46-23-210 and subsection (3) of this section, a person sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except medical reasons, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the person was previously sentenced for either of two or three offenses listed in subsection (1), as applicable, pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the person's present sentence.

(4) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention.

History: En. Sec. 1, Ch. 482, L. 1995; amd. Sec. 20, Ch. 482, L. 1995.

Compiler's Comments

Coordination Instruction: Section 20, Ch. 482, L. 1995, provided: "If House Bill No. 46 is passed and approved, then the crime of arson, 45-6-103, is deleted from the crimes listed in [subsection (1)(b) of section 1 of this act]." House Bill No. 46 was approved March 13, 1995, as Ch. 124, L. 1995. Therefore, the reference to the crime of arson has been deleted from 46-18-219(1)(b).

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, 46-18-219, enacted as sec. 1 of Senate Bill No. 66, is effective July 1, 1997.

46-18-220. Sentences for certain offenses committed in state prison — death penalty. A person serving a sentence of imprisonment in the state prison convicted of the offense of attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310.

History: En. Sec. 1, Ch. 696, L. 1985.

46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section shall run consecutively to the sentence provided for the offense.

History: En. 95-2206.17 by Sec. 13, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.17; amd. Sec. 1, Ch. 108, L. 1981.

Cross-References

Sentencing of persistent felony offender, 46-18-502.

46-18-222. *(Temporary)* **Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(5) through (7), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which the defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which the defendant is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the ultimate protection of the victim and society, in which case the court shall include in its judgment a statement of the reasons for its determination.

46-18-222. *(Effective July 1, 1997)* **Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this state and 46-18-219 and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201(5) through (7), 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which the defendant is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which the defendant is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which the defendant is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant in a local community affords a better opportu-

nity for rehabilitation of the defendant and for the ultimate protection of the victim and society, in which case the court shall include in its judgment a statement of the reasons for its determination.

History: En. 95-2206.18 by Sec. 14, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.18; amd. Sec. 3, Ch. 322, L. 1979; amd. Sec. 1, Ch. 396, L. 1979; amd. Sec. 2, Ch. 207, L. 1981; amd. Sec. 2, Ch. 327, L. 1981; amd. Sec. 2, Ch. 392, L. 1983; amd. Sec. 1, Ch. 532, L. 1983; amd. Sec. 105, Ch. 370, L. 1987; amd. Sec. 3, Ch. 564, L. 1991; amd. Sec. 46, Ch. 262, L. 1993; amd. Sec. 12, Ch. 125, L. 1995; amd. Sec. 14, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 125 near end of introductory phrase substituted "46-18-201(5) through (7)" for "46-18-201(4) through (6)"; and in (6) substituted "protection of the victim and society" for "protection of society".

Chapter 482 in version effective July 1, 1997, near middle of introductory clause after "state", inserted "and 46-18-219".

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 46-18-222, enacted as sec. 14 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Deliberate homicide, 45-5-102.
Mitigated deliberate homicide, 45-5-103.
Aggravated assault, 45-5-202.
Kidnapping, 45-5-302.
Aggravated kidnapping, 45-5-303.
Robbery, 45-5-401.
Sexual intercourse without consent, 45-5-503.
Criminal sale of dangerous drugs, 45-9-101.
Criminal possession of dangerous drugs, 45-9-102.
Criminal possession with intent to sell, 45-9-103.
Sentencing of persistent felony offender, 46-18-502.

46-18-223. Hearing to determine application of exceptions. (1) When the application of an exception provided for in 46-18-222 is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

History: En. 95-2206.19 by Sec. 15, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.19.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.
Right to counsel, 46-8-101.
Court to advise defendant of rights, 46-12-210.
Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition. (1) A person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years or more than 25 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand; and

(b) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978.

History: En. Sec. 1, Ch. 392, L. 1983.

46-18-225. *(Temporary)* **Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony offender to a term of imprisonment in the state prison or the women's correctional system, the court shall take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in the state prison or the women's correctional system;

(2) the needs of the offender can be better served in the community or in a facility or program other than the state prison or the women's correctional system;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the character and attitude of the offender indicate that the offender is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or the offender's family.

46-18-225. *(Effective July 1, 1997)* **Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony offender to whom 46-18-219 does not apply to a term of imprisonment in the state prison or the women's correctional system, the court shall take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in the state prison or the women's correctional system;

(2) the needs of the offender can be better served in the community or in a facility or program other than the state prison or the women's correctional system;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the character and attitude of the offender indicate that the offender is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or the offender's family.

History: En. Sec. 4, Ch. 794, L. 1991; amd. Sec. 66, Ch. 10, L. 1993; amd. Sec. 15, Ch. 482, L. 1995; amd. Sec. 215, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 482 in version effective July 1, 1997, in introductory clause, after "offender", inserted "to whom 46-18-219 does not apply".

Chapter 546 in introductory clause, (1), and (2) substituted "women's correctional system" for "women's correctional center". Amendment effective July 1, 1995.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 46-18-225, enacted as sec. 15 of Senate Bill No. 66, are effective July 1, 1997.

46-18-226 through 46-18-230 reserved.

46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000.

History: En. Sec. 1, Ch. 198, L. 1981; amd. Sec. 106, Ch. 370, L. 1987; amd. Sec. 8, Ch. 610, L. 1987; amd. Sec. 3, Ch. 575, L. 1989; amd. Sec. 3, Ch. 42, L. 1991; amd. Sec. 2, Ch. 519, L. 1991.

46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of his sentence. Such costs shall be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 2, Ch. 198, L. 1981.

46-18-233. Fine or costs as a condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of his sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment.

History: En. Sec. 3, Ch. 198, L. 1981.

46-18-234. When payment of fine or costs due. Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the payment is due immediately.

History: En. Sec. 4, Ch. 198, L. 1981.

46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 must be paid:

(1) by a district court to the county general fund of the county in which the court is held, except that:

(a) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the state for deposit into the state general fund to the extent that the expenses were paid by the state; and

(b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, the court may order the money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency that made the arrest from which the conviction and fine arose; and

(2) by a justice's court pursuant to 3-10-601.

History: En. Sec. 5, Ch. 198, L. 1981; amd. Sec. 6, Ch. 180, L. 1983; amd. Sec. 16, Ch. 680, L. 1985; amd. Sec. 10, Ch. 1, Sp. L. 1985; amd. Sec. 1, Ch. 553, L. 1987; amd. Sec. 30, Ch. 557, L. 1987; amd. Sec. 59, Ch. 83, L. 1989; amd. Sec. 2, Ch. 296, L. 1991; amd. Sec. 9, Ch. 704, L. 1991; amd. Sec. 51, Ch. 509, L. 1995; amd. Sec. 216, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 509 deleted (1)(c) that read: "(c) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected must be deposited in the state special revenue fund for use of the department of family services in the battered spouses and domestic violence grant program created by 52-6-101"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(c) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995. The Ch. 546 amendment in (1)(c) was rendered void by the Ch. 509 amendment.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge; and

(b) the greater of $20 or 10% of the fine levied for each felony charge.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charge.

(5) The charges collected under subsection (1), except those collected by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must

be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsection (1) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for such salaries may be used for the payment of any other county salaries.

History: En. Sec. 1, Ch. 719, L. 1985; amd. Sec. 3, Ch. 17, Sp. L. June 1986; amd. Sec. 31, Ch. 557, L. 1987; amd. Sec. 4, Ch. 667, L. 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Payment of salaries of county officials and assistants, 7-4-2502.

Salary schedule for certain county officers, 7-4-2503.

Amount of compensation for deputies and assistants, 7-4-2505.

Office of city attorney, Title 7, ch. 4, part 46.

46-18-237 through 46-18-240 reserved.

46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court shall require an offender to make restitution to any victim of the offense who has sustained pecuniary loss as a result of the offense, including a person suffering an economic loss as a result of the crime.

(2) The court may require the offender to pay the cost of supervising the payment of restitution, as provided in 46-18-245, by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5 or more than $250. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245.

(3) If the court finds that, because of circumstances beyond the offender's control, the offender is not and will not be able to pay any restitution during the period of state supervision, the court may order the offender to perform community service commensurate with the amount of restitution that would have been imposed.

History: En. Sec. 1, Ch. 426, L. 1983; amd. Sec. 1, Ch. 490, L. 1989; amd. Sec. 13, Ch. 125, L. 1995; amd. Sec. 2, Ch. 310, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 125 in (1) substituted "shall require" for "may require" and at end inserted phrase relating to pecuniary loss; and inserted (3) allowing community service in lieu of restitution.

Chapter 310 at end of (1) inserted "including a person suffering an economic loss as a result of the crime".

Applicability: Section 43, Ch. 125, L. 1995, provided: "[Sections 10 [46-18-201], 13 [46-18-241], and 21 [46-18-302]] apply to trials for and sentences imposed for crimes that were committed on or after [the effective date of this act].” Effective October 1, 1995.

Cross-References

Treatment of victims and witnesses, Title 46, ch. 24.

46-18-242. Investigation and report of victim’s loss. (1) Whenever the court believes that a victim of the offense may have sustained a pecuniary loss as a result of the offense or whenever the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender’s financial resources and future ability to pay restitution; and

(b) documentation of the victim’s pecuniary loss, submitted by the victim or by the board of crime control if compensation for the victim’s loss has been reimbursed by the crime victims compensation and assistance account.

(2) When a presentence report is not authorized or requested, the court may receive evidence of the offender’s ability to pay and the victim’s loss at the time of sentencing.

History: En. Sec. 2, Ch. 426, L. 1983; amd. Sec. 14, Ch. 125, L. 1995.

Compiler’s Comments

1995 Amendment: Chapter 125 near beginning of (1) substituted reference to victim’s pecuniary loss for “restitution may be a proper condition of a deferred or suspended sentence”; at end of (1)(b) inserted reference to Board of Crime Control and crime victims compensation and assistance account; and made minor changes in style.

46-18-243. Definitions. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) “Pecuniary loss” means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender’s criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses, loss of income, expenses reasonably incurred in obtaining ordinary and necessary services that the victim would have performed if not injured, expenses reasonably incurred in attending court proceedings related to the commission of the offense, and reasonable expenses related to funeral and burial or crematory services; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2)(a) “Victim” means:

(i) a person who suffers loss of property, bodily injury, or death as a result of:

(A) the commission of an offense;

(B) the good faith effort to prevent the commission of an offense; or

(C) the good faith effort to apprehend a person reasonably suspected of committing an offense;

(ii) the estate of a deceased or incapacitated victim or a member of the immediate family of a homicide victim;

(iii) a governmental entity that suffers loss of property as a result of the commission of an offense in this state; or

(iv) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for pecuniary loss.

(b) Victim does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction.

History: En. Sec. 3, Ch. 426, L. 1983; amd. Sec. 15, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 at end of (1)(a) inserted reference to loss of income and expenses related to services, court proceedings, and funeral and burial or crematory services; in (2)(a)(i)(A) and (2)(a)(i)(B) substituted "the commission of an offense" for "criminally injurious conduct"; inserted (2)(a)(i)(C) relating to attempted apprehension of suspect; inserted (2)(a)(ii) relating to victim's estate or immediate family; inserted (2)(a)(iii) relating to governmental entity; inserted (2)(b) excluding those accountable for crime from definition of victim; and made minor changes in style.

46-18-244. Type and time of payment — defenses. (1) The court shall specify the amount, method, and time of payment to the victim and may permit payment in installments. The court may not establish a payment schedule extending beyond the period of state supervision over the offender.

(2) In determining the amount, method, and time of payment, the court shall consider the financial resources and future ability of the offender to pay. The court may provide for payment to a victim up to but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that the offender could raise in a civil action for the loss sought to be compensated by the restitution order.

(3) In addition to other methods of payment, the court may order one or more of the following in order to satisfy the offender's restitution obligation:

(a) forfeiture and sale of the offender's assets under the provisions of Title 25, chapter 13, part 7, unless the court finds, after notice and an opportunity for the offender to be heard, that the assets are reasonably necessary for the offender to sustain a living or support the offender's dependents or unless the state determines that the cost of forfeiture and sale would outweigh the amount available to the victim after sale. If the proceeds of sale exceed the amount of restitution ordered and the costs of forfeiture and sale, any remaining amount must be returned to the offender.

(b) return of any property to the victim;

(c) payment of up to one-third of the offender's prison earnings.

(4) With the consent of the victim and in the discretion of the court, an offender may be ordered to make restitution in services in lieu of money or to make restitution to a person designated by the victim, if that person provided services to the victim as a result of the offense.

History: En. Sec. 4, Ch. 426, L. 1983; amd. Sec. 16, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 at end of (1) substituted "period of state supervision over the offender" for "period for which the sentence has been suspended or deferred under 46-18-201"; inserted (3) relating to methods of payment of restitution; inserted (4) allowing restitution in services in lieu of money or restitution to a third person; and made minor changes in style.

46-18-245. Supervision of payment. The court may order a probation officer, restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment. If the victim has received compensation under Title 53, chapter 9, the court may also order an employee of the board of crime control to supervise the making of restitution and to report to the court any default in payment.

History: En. Sec. 5, Ch. 426, L. 1983; amd. Sec. 17, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 at end inserted sentence relating to supervision of restitution by employee of Board of Crime Control.

46-18-246. Waiver or modification of payment. An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that the victim will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition, amount, method, or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule, but not beyond the period provided for in 46-18-244.

History: En. Sec. 6, Ch. 426, L. 1983; amd. Sec. 18, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 at end substituted "period provided for in 46-18-244" for "period for which the sentence has been suspended or deferred under 46-18-201"; and made minor changes in style.

46-18-247. Default. (1) If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why the offender should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and place for a hearing or, if the offender fails to appear as ordered, issue a warrant for the offender's arrest. The order or warrant must be accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributable to the offender's failure to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided for in 46-18-203. If confinement is ordered, the court, after entering the order, may reduce the term of confinement and, in accordance with the provisions of 46-18-246, waive satisfaction of the restitution order.

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment of restitution, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments.

History: En. Sec. 7, Ch. 426, L. 1983; amd. Sec. 19, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 in (2), in second sentence after "may", deleted "at any time, for good cause shown" and inserted reference to 46-18-246; and made minor changes in style.

46-18-248. Rights of crime victims compensation and assistance account. (1) Whenever a victim is paid from the crime victims compensation and assistance account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the crime victims compensation and assistance account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction that is part of the same continuous scheme of criminal activity of an offender.

History: En. Sec. 8, Ch. 426, L. 1983; amd. Sec. 53, Ch. 18, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 18 throughout section substituted reference to crime victims compensation and assistance account for reference to crime victims' compensation account; and made minor changes in style.

46-18-249. Civil actions by victim. (1) Sections 46-18-241 through 46-18-249 do not limit or impair the right of a victim to sue and recover damages from the offender in a civil action.

(2) The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action.

(3) Any restitution paid by the offender to the victim must be set off against any pecuniary loss awarded to the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any setoff asserted by the defendant under this section.

History: En. Sec. 9, Ch. 426, L. 1983.

46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund. (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund. Subject to the availability of money in the fund, if the whereabouts of a victim whose restitution payments were deposited in the county restitution fund become known, the county shall refund to the victim payments that were deposited in the fund.

(2) Money in the restitution fund may be used to provide payments on behalf of offenders who are ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain employment or are unable to obtain employment sufficient to make restitution payments and sustain themselves and their dependents. The offender may perform community service, and for each hour of community service performed, the victim shall receive an amount equal to the minimum hourly wage from the county restitution fund. A judge may order an offender to perform community service work for restitution payments upon a finding that the offender would not otherwise be able to make restitution payments and that there are funds available in the county restitution fund for payments to the victim.

(3) Money in the county restitution fund that is due to a victim under this part must be paid to the crime victims compensation and assistance account, established in 53-9-109, if payments have been made to or on behalf of the victim from the account. Payment from the county restitution fund to the crime victims compensation and assistance account may be made only from money paid by the offender who caused the injury or death that resulted in the payment from the account.

History: En. Sec. 1, Ch. 545, L. 1989; amd. Sec. 54, Ch. 18, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 18 in (3), in two places, substituted reference to crime victims compensation and assistance account for reference to crime victims' compensation account; and made minor changes in style.

46-18-251. Allocation of fines, costs, restitution, and other charges. (1) If an offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money collected from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;
(b) payment of costs imposed pursuant to 46-18-232 or 46-18-233;
(c) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and
(d) any other payments ordered by the court.

(3) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fines, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution.

History: En. Sec. 20, Ch. 125, L. 1995.

46-18-252 and 46-18-253 reserved.

46-18-254. Release of sexual or violent offender — duties of court and department. A sexual or violent offender must be informed in writing at the time of sentencing of the duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which the offender is sentenced. The department of corrections shall obtain the address at which the person expects to reside upon release or discharge or suspension of the person's sentence. The department of corrections shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

History: En. Sec. 3, Ch. 293, L. 1989; amd. Sec. 67, Ch. 10, L. 1993; amd. Sec. 2, Ch. 407, L. 1995; amd. Sec. 217, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 407 near beginning inserted "or violent"; and made minor changes in style.

Chapter 546 in two places substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Cross-References

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-255. Sentence upon conviction — restriction on employment. A judge sentencing a person upon conviction of a sexual or violent offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant.

History: En. Sec. 9, Ch. 293, L. 1989; amd. Sec. 3, Ch. 407, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 407 near beginning inserted "or violent".

Cross-References

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-256. Sexually transmitted disease testing — test procedure. (1) Following entry of judgment, a person convicted of a sexual offense, as defined in 46-23-502, must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim is a minor, be administered standard testing according to currently accepted protocol, using guidelines established by the centers for disease control, U.S. department of health and human services, to detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other sexually transmitted diseases, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

(a) the convicted person; and

(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-521, finding a youth to be a delinquent youth or a youth in need of supervision.

(6) The provisions of the AIDS Prevention Act, Title 50, chapter 16, part 10, do not apply to this section.

History: En. Sec. 1, Ch. 504, L. 1991; amd. Sec. 1, Ch. 71, L. 1993.

46-18-257 through 46-18-260 reserved.

46-18-261. Recovery of suppression and investigation expenses for fires caused by arson. (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement and firefighting agencies for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement or firefighting agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action.

History: En. Sec. 1, Ch. 447, L. 1989.

Part 3
Death Penalty

46-18-301. Hearing on imposition of death penalty. When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed. The hearing shall be conducted before the court alone.

History: En. 95-2206.6 by Sec. 1, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.6.

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

46-18-302. Evidence that may be received. In the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime; the defendant's character, background, history, and mental and physical condition; the harm caused to the victim and the victim's family as a result of the offense; and any other facts in aggravation or mitigation of the penalty. Any evidence that the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to aggravating or mitigating circumstances must be considered without reintroducing it at the sentencing proceeding. The state and the defendant or the defendant's counsel must be permitted to present argument for or against sentence of death.

History: En. 95-2206.7 by Sec. 2, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.7; amd. Sec. 21, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 in first sentence inserted third clause referring to harm caused to victim or victim's family; and made minor changes in style.

Applicability: Section 43, Ch. 125, L. 1995, provided: "[Sections 10 [46-18-201], 13 [46-18-241], and 21 [46-18-302]] apply to trials for and sentences imposed for crimes that were committed on or after [the effective date of this act]." Effective October 1, 1995.

46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

History: En. 95-2206.8 by Sec. 3, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.8; amd. Sec. 2, Ch. 696, L. 1985; amd. Sec. 1, Ch. 387, L. 1987; amd. Sec. 1, Ch. 81, L. 1989.

Cross-References

Sentences for certain offenses committed in state prison, 46-18-220.

46-18-304. Mitigating circumstances. (1) Mitigating circumstances are any of the following:

(a) The defendant has no significant history of prior criminal activity.

(b) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(c) The defendant acted under extreme duress or under the substantial domination of another person.

(d) The capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.

(e) The victim was a participant in the defendant's conduct or consented to the act.

(f) The defendant was an accomplice in an offense committed by another person, and the defendant's participation was relatively minor.

(g) The defendant, at the time of the commission of the crime, was less than 18 years of age.

(2) The court may consider any other fact that exists in mitigation of the penalty.

History: En. 95-2206.9 by Sec. 4, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.9; amd. Sec. 55, Ch. 18, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 18 at beginning of (2) substituted "The court may consider any" for "Any"; and made minor changes in style.

46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

History: En. 95-2206.10 by Sec. 5, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.10.

46-18-306. Specific written findings of fact. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact as to the existence or nonexistence of each of the circumstances set forth in 46-18-303 and 46-18-304. The written findings of fact shall be substantiated by the records of the trial and the sentencing proceeding.

History: En. 95-2206.11 by Sec. 6, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.11.

46-18-307. Automatic review of sentence. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana as provided for in 46-18-308 through 46-18-310.

History: En. 95-2206.12 by Sec. 7, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.12.

46-18-308. Time for review — consolidation with appeal. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana within 60 days after certification by the sentencing court of the entire record unless the time is extended by the supreme court for good cause shown. The review by the supreme court has priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

History: En. 95-2206.13 by Sec. 8, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.13.

46-18-309. Transmission of transcript and record of trial. The clerk of the trial court, within 10 days after receiving the transcript, shall transmit the entire record and transcript to the supreme court.

History: En. 95-2206.14 by Sec. 9, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.14.

46-18-310. Supreme court's determination as to the sentence. The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

(1) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

(3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

The court shall include in its decision a reference to those similar cases it took into consideration.

History: **En. 95-2206.15 by Sec. 10, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.15.**

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

Part 4

Factors That Reduce Sentence

46-18-401. Consecutive sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term may not be merged in the other term; and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation may not be merged in any new sentence of commitment or probation.

(2) The court, whether or not it merges the sentences, shall immediately furnish each of the other courts and the penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite any sentence that is merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court that imposed the sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses must run consecutively unless the court otherwise orders.

History: **En. 95-2213 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 340, L. 1977; R.C.M. 1947, 95-2213; amd. Sec. 23, Ch. 116, L. 1979; amd. Sec. 11, Ch. 583, L. 1981; amd. Sec. 1, Ch. 76, L. 1989; amd. Sec. 2, Ch. 372, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 372 deleted (5) that read: "(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole"; and made minor changes in style. Amendment effective April 12, 1995.

Cross-References

Service of term for additional crime, 46-23-217.

46-18-402. *(Temporary)* **Credit for time served.** Where defendant has served any portion of his sentence under a commitment based upon a judgment which is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts. In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit.

46-18-402. *(Effective January 31, 1997)* **Credit for time served.** If a defendant has served any portion of the defendant's sentence under a commitment based upon a judgment that is subsequently declared invalid or that is modified during the term of imprisonment, the time served must be credited against any subsequent sentence received upon a new commitment for the same criminal act or acts.

History: En. 95-2214 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2214; amd. Sec. 3, Ch. 372, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 372 in version effective January 31, 1997, deleted second sentence that read: "In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit"; and made minor changes in style. Amendment effective January 31, 1997.

46-18-403. Credit for incarceration prior to conviction. (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered must be allowed credit for each day of incarceration prior to or after conviction, except that the time allowed as a credit may not exceed the term of the prison sentence rendered.

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense must be allowed a credit for each day of incarceration prior to conviction, except that the amount allowed or credited may not exceed the amount of the fine. The daily rate of credit for incarceration must be established annually by the board of county commissioners by resolution. The daily rate must be equal to the actual cost incurred by the detention facility for which the rate is established.

History: En. 95-2215 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2215; amd. Sec. 2, Ch. 270, L. 1989; amd. Sec. 4, Ch. 388, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 388 in (2), in first sentence after "credit", deleted "of $25" and inserted second and third sentences concerning the establishment and amount of the daily rate of credit for incarceration; and made minor changes in style. Amendment effective April 12, 1995.

46-18-404. Repealed. Sec. 12, Ch. 372, L. 1995.

History: En. 95-2206.16 by Sec. 1, Ch. 340, L. 1977; R.C.M. 1947, 95-2206.16; amd. Sec. 1, Ch. 426, L. 1979; amd. Sec. 1, Ch. 106, L. 1989.

Part 5

Persistent Felony Offenders

46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(1) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(2) less than 5 years have elapsed between the commission of the present offense and either:

(a) the previous felony conviction; or

(b) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(3) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a postconviction hearing.

History: **En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(1).**

46-18-502. *(Temporary)* **Sentencing of persistent felony offender.** (1) Except as provided in subsection (2), a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if he was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and he was 21 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) shall run consecutive to any other sentence imposed.

46-18-502. *(Effective July 1, 1997)* **Sentencing of persistent felony offender.** (1) Except as provided in 46-18-219 and subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if the offender was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of the offender's previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and the offender was 21 years of age or older at the time of the commission of the present offense, the offender shall, except as provided in 46-18-219, be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed.

History: **En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(2), (3); amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 327, L. 1981; amd. Sec. 16, Ch. 482, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (1), near beginning, and in (2), near end, inserted reference to exception in 46-18-219; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 46-18-502, enacted as sec. 16 of Senate Bill No. 66, are effective July 1, 1997.

Cross-References

Prohibition on deferral of imposition of sentence, 46-18-201(5).

Additional sentence for offenses committed with a dangerous weapon, 46-18-221.

46-18-503. Renumbered 46-13-108 by Code Commissioner, 1991.

Part 6
Procedure After Sentencing

Part Cross-References

Disposition of fine or forfeited bond — nonsupport, 45-5-621.

Disposition of fine or forfeited bond — endangering welfare of children, 45-5-622.

46-18-601. Judgment in writing — lien. (1) The judgment shall be reduced to writing and signed by the judge.

(2) A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

History: En. 95-2208 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2208.

46-18-602. Repealed. Sec. 6, Ch. 104, L. 1981.

History: En. 95-2209 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2209.

46-18-603. Disposition of fines and forfeitures. All fines and forfeitures collected in any court except city courts must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After such costs are paid, the residue, if not paid to a justice's court or otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the fine or forfeiture is paid to the county treasurer, at the time of such payment there shall be filed with the county treasurer a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action. The statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. 95-2228 by Sec. 10, Ch. 513, L. 1973; R.C.M. 1947, 95-2228; amd. Sec. 32, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Disposition of fine or forfeited bond — nonsupport, 45-5-621.

Disposition of fine or forfeited bond — endangering welfare of children, 45-5-622.

46-18-604. Transmittal of sentencing data to supreme court — compilation. (1) Except as provided in subsection (2), the clerk of district court shall record on forms provided by the clerk of the supreme court the following sentencing data for each defendant sentenced:

(a) the name of the case;

(b) whether the conviction was by verdict or plea;

(c) the fine or imprisonment, or both, allowed by law;

(d) the actual fine or imprisonment, or both, imposed;

(e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

(f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

(g) the percentage of fine or imprisonment, or both, imposed that is suspended.

(2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be shown in the report, together with the case name and the actual sentence imposed.

(3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

(4) The clerk of district court shall report the reasons given by the judge for the disposition of every case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

(5) The sentencing judge shall sign the form containing the information recorded by the clerk of district court pursuant to this section.

(6) The clerk of district court shall on a quarterly basis total for each judge the data recorded pursuant to subsections (1) and (2), sign the report, and forward all such data to the clerk of the supreme court.

(7) The clerk of the supreme court shall compile the reports submitted by the district court clerks and distribute the data to all district court clerks and any interested party on April 1 of each year.

(8) The clerk of the supreme court shall provide a form for the recording of data required by this section.

History: En. Sec. 1, Ch. 459, L. 1981.

Part 7
Jail Work Release Program

Part Cross-References

County jail work programs, 7-32-2225 through 7-32-2227.

46-18-701. Parole during employment hours. (1) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement with parole during the hours or periods the convicted person is actually employed.

(2) Upon the issuance of such an order under this part, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible. However, said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(a), (b).

46-18-702. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings the sheriff shall pay the prisoner's board and personal expenses both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any. Any balance shall be retained until his discharge.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(c).

46-18-703. Transfer to another county. The court may by order authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county. When such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person and shall dispose of said moneys as provided by 46-18-702.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(f).

46-18-704. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term if, in the opinion of the court, the prisoner's conduct, diligence, and general attitude merit such diminution.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(d).

46-18-705. Effect of violation of conditions. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court. The court may then require that the balance of his sentence be spent in full confinement, and further, the court may cancel any diminution of sentence granted under this part.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(e).

Part 8
Effect of Conviction

Part Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Treason — no forfeiture of property, Art. II, sec. 30, Mont. Const.

Sections affecting the right to vote, Art. IV, sec. 2, Mont. Const.; 13-1-111, 13-2-402, 20-20-301.

Sections creating loss of or ineligibility for office, Art. IV, sec. 4, Mont. Const.; 2-16-501, 3-1-1109, 3-1-1110, 3-15-303, 5-5-403, 7-4-2520, 13-36-209, 13-36-210, 70-30-207.

Sections relating to denial, revocation, or suspension of professional or occupational licenses, 15-30-302, 16-10-403, 20-4-110, 23-4-201, 30-10-201, 32-2-409, 33-17-507, 33-17-1001, 33-21-113, 37-3-323, 37-6-311, 37-7-321, 37-11-321, 37-16-411, 37-47-302, 37-47-341, 37-51-321, 37-61-301, 37-67-331, 80-7-107.

Sections creating loss of or ineligibility for employment, 7-32-2104, 7-32-2107, 7-32-4160, 32-1-322, 32-1-462, 44-1-612.

Sections providing for loss of benefits, 10-2-403, 72-2-813.

Sections creating civil liability, 20-3-332, 23-5-131, 37-51-323, 61-4-406, 75-2-413.

Sections creating forfeiture of money or property, 30-14-132, 33-21-113, 81-5-104, 81-5-111, 87-1-513.

Still competent to be a witness, Rules 601, 609, M.R.Ev. (see Title 26, ch. 10).

Policy to minimize restrictions on or loss of licenses — encourage rehabilitation, Title 37, ch. 1, part 2.

Employment restrictions — sexual offenders, 46-18-255.

Registration of sexual offenders, Title 46, ch. 23, part 5.

Loss of driver's license, 61-5-205, 61-5-401.

46-18-801. Effect of conviction — civil disabilities. (1) Conviction of an offense does not deprive the offender of a civil or constitutional right, except as provided in the Montana constitution or as specifically enumerated by the sentencing judge as a necessary condition of the sentence directed toward the objectives of rehabilitation and the protection of society. If the sentencing judge incorporates by reference in the sentencing order rules of the department of corrections or the board of pardons setting conditions of probation, parole, or supervised release with which the offender is required to comply, the incorporation by reference constitutes a specific enumeration of the conditions for purposes of this section.

(2) Except as provided in the Montana constitution, if a person has been deprived of a civil or constitutional right by reason of conviction for an offense and the person's sentence has expired or the person has been pardoned, the person is restored to all civil rights and full citizenship, the same as if the conviction had not occurred.

History: En. 95-2227 by Sec. 9, Ch. 513, L. 1973; R.C.M. 1947, 95-2227; amd. Sec. 1, Ch. 555, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 555 in (1), in first sentence, inserted "as provided in the Montana constitution or" and inserted second sentence regarding rules specifying conditions of probation; deleted former (2) that read: "(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence"; in (2) inserted "Except as provided in the Montana constitution"; and made minor changes in style.

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

Applicability: Section 6, Ch. 555, L. 1995, provided: "(1) [Section 2(1)] [45-8-313(1)] does not apply to a person convicted of an offense referred to in [section 2(1)] [45-8-313(1)] before [the effective date of this act] [effective October 1, 1995].

(2) [Section 3] [45-8-314] applies only to sentences imposed after [the effective date of this act] [effective October 1, 1995].

(3) [Section 1] [46-18-801] applies retroactively, within the meaning of 1-2-109."

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Additional restrictions on sentence, 46-18-202.

Part 9

Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of such judges to act as chairman thereof. The clerk of the Montana supreme court shall record such appointment and shall give notice thereof to the clerk of every district court.

(2) This review division shall meet at least four times a year or more as its business requires, as determined by the chairman. The review division shall hold its meetings at Deer Lodge.

(3) The decision of any two of such judges shall be sufficient to determine any matter before the review division.

(4) The review division may adopt any rules which will expedite its review of sentences. The division is also authorized to appoint a secretary and such clerical help as it deems adequate and fix their compensation.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-902. Interested judge not to act. No judge shall sit or act on a review of sentence imposed by him. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by said division, the chief justice of the supreme court of Montana may designate another judge to act in place of such judge.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-903. Application for review. (1) Any person sentenced to a term of 1 year or more in the state prison by any court of competent jurisdiction may within 60 days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit such application to the review division and shall notify the judge who imposed the sentence and the county attorney of the county in which the sentence was imposed. Such judge may transmit to the review division a statement of his reasons for imposing the sentence and shall transmit such a statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant such request.

(4) The filing of an application for review shall not stay the execution of the sentence.

History: En. 95-2502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2502.

46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review or may decide that the sentence under review should stand.

(2) In reviewing any judgment, said division may require the production of presentence reports and any other records, documents, or exhibits relevant to such review proceedings. The appellant may appear and be represented by counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed. Any other interested person, including the sentencing judge, may attend and participate in the review proceedings.

(3) The sentence imposed by the district court is presumed correct. If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted.

History: **En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part); amd. Sec. 1, Ch. 654, L. 1985.**

46-18-905. Decision — finality, report of. (1) The decision of the review division in each case shall be final, and the reasons for such decision shall be stated therein. The original of each decision shall be sent to the clerk of the court for the county in which the judgment was rendered, and a copy shall be sent to the judge who imposed the sentence reviewed, the person sentenced, and the principal officer of the institution in which he is confined.

(2) The decision shall be reported in the Montana Reports.

History: **En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part).**

Part 10

Home Arrest

46-18-1001. Definitions. As used in this part, the following definitions apply:

(1) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area approved by the supervising authority.

(b) When more than one residence or family are located on a single piece of property, the term does not include the residence of any other person who is not part of the social unit formed by the offender's immediate family.

(2) "Home arrest" means the use of a person's home for purposes of confinement.

(3) "Monitoring device" means an electronic device or apparatus that is limited in capability to recording or transmitting information concerning the offender's presence in or absence from the home. The device must be minimally intrusive.

(4) "Supervising authority" means, in the case of an adult felon, the corrections division of the department of corrections; in the case of an adult misdemeanant, a court-approved entity other than the corrections division of the department of corrections; or, in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity appointed by the court.

(5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date of the present conviction.

History: **En. Sec. 1, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 218, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 546 in (4), in two places, substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

46-18-1002. Home arrest — petition — agreement. (1) An offender may petition a sentencing court for an order directing that all or a portion of a sentence of imprisonment in the county jail or state prison be served under conditions of home arrest. Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the offender's sentence.

(2) The sentencing judge shall study the records of all persons petitioning for home arrest and, in his discretion, may:

(a) refer the case to the appropriate supervising authority for approval and acceptance into the home arrest program. The supervising authority may accept or reject any referral.

(b) conduct hearings on the desirability of granting home arrest;

(c) order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state prison. The time actually spent in home arrest pursuant to this section may not exceed 6 months or the maximum term of imprisonment imposed, whichever is shorter.

(d) issue a warrant for a person when there is reason to believe the person has violated the conditions of home arrest, conduct hearings on the matter, and order imprisonment in the county jail or state prison upon proof of violation; and

(e) grant final discharge from arrest.

(3) A home arrestee shall execute a written agreement with the court setting forth all the conditions of home arrest. The order of home arrest must incorporate that agreement and must order compliance with its terms. The order and agreement must be transmitted to the supervising authority and to the appropriate jail or prison official.

(4) Time spent in home arrest must be credited against the maximum term of imprisonment imposed for the offender pursuant to law.

(5) Home arrest must be under the supervision of the supervising authority. A home arrestee is subject to the decisions of the supervising authority during the period of supervision. Fees for supervision or equipment usage must be paid directly to the clerk of the sentencing court and must be distributed by the clerk to the supervising authority.

History: En. Sec. 2, Ch. 105, L. 1991.

46-18-1003. Home arrest — conditions — fees — consent of cohabitors. (1) A home arrestee must be confined to his home under conditions imposed by the sentencing court, which may include but are not limited to the following:

(a) The home arrestee must be confined to his home at all times except when:

(i) working at approved employment or traveling directly to and from employment;

(ii) seeking employment;

(iii) undergoing medical, psychiatric, or mental health treatment or participating in an approved counseling or aftercare program;

(iv) attending an approved educational institution or program;

(v) attending a regularly scheduled religious service at a place of worship;

(vi) participating in an approved community service program; or

(vii) conforming to a schedule prepared by the supervising authority, specifically setting forth the times when he may be absent from the home and the locations where he may be during those times.

(b) The home arrestee may not commit another offense during the period of home arrest.

(c) The home arrestee may not change the place of home arrest or the schedule without prior approval of the supervising authority.

(d) The home arrestee shall maintain a telephone or other approved monitoring device in the home or on the arrestee's person at all times.

(e) Conditions set by the court or the supervising authority may include:

(i) restitution;

(ii) supervision fees under 7-32-2245, 46-18-702, or 46-18-703;

(iii) any of the conditions imposed on persons on probation or conditional discharge under 46-23-1011 or 46-23-1021.

(2) A written and notarized consent agreement must be filed with the court by every adult who will share the offender's home during the term of home arrest.

(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to prosecution under 45-7-306.

History: En. Sec. 3, Ch. 105, L. 1991.

46-18-1004. Home arrest — ineligibility. A person being held under a detainer, warrant, or process issued by some other jurisdiction is not eligible for home arrest. A person convicted of a violent felony offense is not eligible for home arrest. However, this section does not prevent the use of a monitoring device as a part of an intensive supervision program or other program of the department of corrections.

History: En. Sec. 4, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 219, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

46-18-1005. Home arrest — responsibility for own living expenses — government benefits. A person serving a sentence under conditions of home arrest is responsible for food, housing, clothing, and medical care expenses and is eligible for government benefits to the same extent as a person on probation, parole, or conditional discharge.

History: En. Sec. 5, Ch. 105, L. 1991.

46-18-1006. Home arrest — list of offenders. At least once every 30 days, the supervising authority shall provide all local and county law enforcement agencies with a list of the offenders under home arrest in their jurisdictions. This list must include the following information:

(1) the offender's place of home arrest;

(2) the offense for which the offender was charged, convicted, or otherwise placed under home arrest;

(3) the date that the sentence of home arrest will be completed; and

(4) the name, address, and phone number of the officer of the supervising authority for the offender.

History: En. Sec. 6, Ch. 105, L. 1991.

CHAPTER 19

EXECUTION OF JUDGMENT

Part 1 — Method of Execution

46-19-101. Commitment of defendant.
46-19-102. Execution of fine.
46-19-103. Execution of death sentence.

Part 2 — Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined.
46-19-202. Proceedings following determination regarding fitness.
46-19-203. Procedure for determining if woman is pregnant.
46-19-204. Proceedings following determination regarding pregnancy.

Part 3 — Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents.
46-19-302. Effectuation of purposes of compact.
46-19-303. Power of governor to enter into contracts.
46-19-304. Commitment or transfer of inmate to institution outside of state.
46-19-305. Hearings requested by other states.

Part 4 — Interstate Corrections Compact

46-19-401. Compact adopted — text.
46-19-402. Effectuation of purposes of compact.

Part 1

Method of Execution

Part Cross-References

County jails, Title 7, ch. 32, part 22.

Escape from custody — use of force to prevent, 45-3-106.

Escape from custody — definition, 45-7-306.

Possession of weapon by prisoner, 45-8-318.

State prison, Title 53, ch. 30, part 1.

46-19-101. Commitment of defendant. Upon rendition of judgment after pronouncement of a sentence imposing punishment of imprisonment or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of his confinement or execution.

History: En. 95-2301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2301.

46-19-102. Execution of fine. (1) If the judgment is for a fine alone, execution may issue on the judgment as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained and allowed a credit for each day of incarceration as provided in 46-18-403.

History: En. 95-2302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2302; amd. Sec. 3, Ch. 270, L. 1989; amd. Sec. 5, Ch. 388, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 388 in (2), after "detained", substituted "and allowed a credit for each day of incarceration as provided in 46-18-403" for "until the judgment is complied with. The imprisonment must not exceed 1 day for every $25 of the fine"; and made minor changes in style. Amendment effective April 12, 1995.

Cross-References

Execution of a judgment, Title 25, ch. 13 and 14.

46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice. A defendant who wishes to choose execution by lethal injection shall do so at the hearing at which an execution date is set, and if he does not, the option to choose death by lethal injection is waived.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the warden of the state prison. The warrant must be directed to the warden and recite the conviction, judgment, method of execution, appointed date of execution, and the duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select the person to perform the execution, and the warden or his designee shall supervise the execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.

(6) An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time, mode, and manner in which it was executed.

History: En. 95-2303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2303; amd. Sec. 1, Ch. 191, L. 1981; amd. Sec. 1, Ch. 292, L. 1983; amd. Sec. 4, Ch. 411, L. 1983; amd. Sec. 107, Ch. 370, L. 1987; amd. Sec. 1, Ch. 552, L. 1989.

Cross-References

Execution of death sentence justified, 45-3-109.

Definition of "dead", 50-22-101.

Part 2
Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined. If after judgment of death there is good reason to suppose that the defendant lacks mental fitness, the mental fitness of the defendant will be determined in accordance with the provisions of chapter 14 of this title.

History: En. 95-2304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2304.

46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

(2) If it is found that the defendant lacks fitness, the execution of judgment must be suspended and the court shall commit the defendant to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution of the department of public health and human services for as long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state hospital, the county prosecuting officer, or the defendant or the defendant's legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.

History: En. 95-2305 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 94, Ch. 120, L. 1974; R.C.M. 1947, 95-2305; amd. Sec. 8, Ch. 361, L. 1983; amd. Sec. 5, Ch. 411, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 220, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

46-19-203. Procedure for determining if woman is pregnant. If there is good reason to suppose a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, must summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce his own witnesses.

History: En. 95-2306 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2306.

46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry that the woman is not pregnant, the warden of the Montana state prison shall execute the judgment. If it is found that the woman is pregnant, the warden shall suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue a death warrant appointing a day for the execution of the judgment. The warrant must recite the conviction, the judgment, the method of execution, that execution of judgment was suspended due to pregnancy, that the governor is satisfied that the woman is no longer pregnant, the appointed date for the execution, and the duration of the warrant.

History: **En. 95-2307 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2307; amd. Sec. 6, Ch. 411, L. 1983; amd. Sec. 1, Ch. 551, L. 1989.**

Part 3

Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;

(2) "sending state" means a state party to this compact in which conviction was had;

(3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;

(4) "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution;

(5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III. Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) its duration;

(b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) delivery and retaking of inmates;

(e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 95-2308 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2308.

46-19-302. Effectuation of purposes of compact. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions, including but not limited to the making and submission of such reports as are required by the compact.

History: En. 95-2310 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2310.

46-19-303. Power of governor to enter into contracts. The governor may designate the department of corrections to enter into contracts recommended by the department on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301.

History: En. 95-2312 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2312; amd. Sec. 1, Ch. 59, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 221, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

46-19-304. Commitment or transfer of inmate to institution outside of state. Any court or state agency having power to commit or transfer an inmate (as defined in Article II(4) of the Western Interstate Corrections Compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to Article III of the Western Interstate Corrections Compact.

History: En. 95-2309 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2309.

46-19-305. Hearings requested by other states. The board of pardons and parole and the department of corrections shall hold hearings as may be requested by any other party state pursuant to Article IV(6) of the Western Interstate Corrections Compact.

History: En. 95-2311 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 95, Ch. 120, L. 1974; R.C.M. 1947, 95-2311; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 222, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "board of pardons and parole" for "board of pardons" and substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Part 4
Interstate Corrections Compact

46-19-401. Compact adopted — text. The Interstate Corrections Compact is entered into by this state with any and all other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article II. Definitions

As used in this compact, unless the context requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

Article III. Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.
3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.
4. Delivery and retaking of inmates.
5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state. For transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 112, L. 1987.

46-19-402. Effectuation of purposes of compact. The department of corrections shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within its jurisdiction, including but not limited to the making and submission of the reports that are required by the compact.

History: En. Sec. 2, Ch. 112, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 223, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

CHAPTER 20

APPEALS

Part 1 — General Provisions

46-20-101. Single method of review in criminal cases.
46-20-102. Superseded.
46-20-103. Scope of appeal by state.
46-20-104. Scope of appeal by defendant.
46-20-105. Appeal by one codefendant.

Part 2 — Initiation of Appeal

46-20-201. Superseded.
46-20-202. Superseded.
46-20-203. Superseded.
46-20-204. Stay of execution and relief pending appeal.
46-20-205. Effect of an appeal by the state.

Part 3 — The Record on Appeal
(Superseded. Sup. Ct. Ord. June 16, 1986,
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Part 4 — Briefs
(Superseded. Sup. Ct. Ord. June 16, 1986,
eff. Jan. 19, 1987)

Part 5 — Motions and Papers in General
(Superseded. Sup. Ct. Ord. June 16, 1986,
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Part 6 — Oral Argument
(Superseded. Sup. Ct. Ord. June 16, 1986,
eff. Jan. 19, 1987)

Part 7 — Action by Court

46-20-701. Elements of record court considers on review — errors noticed.
46-20-702. Renumbered 46-20-701(2) by Code Commissioner, 1987.
46-20-703. Action reviewing court may take.
46-20-704. Superseded.
46-20-705. Superseded.
46-20-706. Termination of appeal — remand.
46-20-707. Discharge of defendant on reversal of judgment.

Chapter Cross-References

Procedure on appeal — Alcoholic Beverage Code, 16-6-202.

Part 1
General Provisions

46-20-101. Single method of review in criminal cases. (1) This chapter shall govern review in all criminal cases.

(2) All existing methods of review in criminal cases in the state are abolished. After January 1, 1968, the only method of review in criminal cases shall be by notice of appeal.

History: En. 95-2401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2401.

46-20-102. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2402.

46-20-103. Scope of appeal by state. (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;
(b) modifying or changing the verdict as provided in 46-16-702(3)(c);
(c) granting a new trial;
(d) quashing an arrest or search warrant;
(e) suppressing evidence;
(f) suppressing a confession or admission;
(g) granting or denying change of venue; or
(h) imposing a sentence that is contrary to law.

History: En. 95-2403 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 41, Ch. 184, L. 1977; R.C.M. 1947, 95-2403; amd. Sec. 1, Ch. 478, L. 1989.

Cross-References

Appeal by party other than state to District Court from Justices' or City Courts, 46-17-311.

46-20-104. Scope of appeal by defendant. (1) An appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.

(2) Upon appeal from a judgment, the court may review the verdict or decision and any alleged error objected to which involves the merits or necessarily affects the judgment. Failure to make a timely objection during trial constitutes a waiver of the objection except as provided in 46-20-701(2).

History: En. 95-2404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2404; amd. Sec. 1, Ch. 319, L. 1983.

46-20-105. Appeal by one codefendant. When several defendants are tried jointly, any one or more of them may take an appeal but those who do not join in the appeal shall not be affected thereby.

History: En. 95-2429 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2429.

Part 2

Initiation of Appeal

Part Cross-References

Notice to Attorney General when department or board appeals, 46-1-302.

46-20-201. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(a) thru (c).

46-20-202. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(d).

46-20-203. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(e).

46-20-204. Stay of execution and relief pending appeal. (1) If an appeal is taken, a sentence of death shall be stayed by order of the trial court until final order by the supreme court.

(2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the trial court.

(3) If an appeal is taken, a sentence to pay a fine or a fine and costs shall be stayed by the trial court or by the reviewing court.

(4) If an appeal is taken and the accused was admitted to probation, he shall remain on probation or post bail.

History: En. 95-2406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2406.

46-20-205. Effect of an appeal by the state. An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed.

History: En. 95-2407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2407.

Part 3

The Record on Appeal (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-301. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(a).

46-20-302. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(b); amd. Sec. 1, Ch. 148, L. 1983.

46-20-303. En. 95-2428 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2428.

46-20-304. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(c).

46-20-305. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(d).

46-20-306. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(e).

46-20-307 through 46-20-310 reserved.

46-20-311. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(a), (b).

46-20-312. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).

46-20-313. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).

46-20-314. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(d).

46-20-315. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(e).

46-20-316. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(a).

46-20-317. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(b).

46-20-318. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(c); amd. Sec. 24, Ch. 116, L. 1979.

46-20-319. En. 95-2411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2411.

Part 4

Briefs (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-401. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(a).

46-20-402. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(b).

46-20-403. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(c).

46-20-404. En. 95-2417 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2417.

46-20-405. En. 95-2419 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2419.

46-20-406. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(d).

46-20-407. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(e).

46-20-408. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(f).

46-20-409. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(g).

46-20-410. En. 95-2418 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2418.

Part 5

Motions and Papers in General (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-501. En. 95-2415 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2415.

46-20-502. En. 95-2413 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2413.

46-20-503. En. 95-2414 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2414.

46-20-504. En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(c).

46-20-505 through 46-20-510 reserved.

46-20-511. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(a).

46-20-512. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(b).

46-20-513. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(c).

Part 6

Oral Argument (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-601. En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(a), (b).

46-20-602. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(a).

46-20-603. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(b), (c), (f).

46-20-604. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(d), (e).

Part 7

Action by Court

46-20-701. Elements of record court considers on review — errors noticed. (1) Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent [convicted person] affecting his substantial rights on the appeal of said cause, together with any required objection of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings and the objections thereto and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. No cause shall be reversed by reason of any error committed by the trial court against the appellant [convicted person] unless the record shows that the error was prejudicial.

(2) Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. No claim alleging an error affecting jurisdictional or constitutional rights may be noticed on appeal, if the alleged error was not objected to as provided in 46-20-104, unless the defendant [convicted person] establishes that the error was prejudicial as to his guilt or punishment and that:

(a) the right asserted in the claim did not exist at the time of the trial and has been determined to be retroactive in its application;

(b) the prosecutor, the judge, or a law enforcement agency suppressed evidence from the defendant [convicted person] or his attorney that prevented the claim from being raised and disposed of; or

(c) material and controlling facts upon which the claim is predicated were not known to the defendant [convicted person] or his attorney and could not have been ascertained by the exercise of reasonable diligence.

History: (1)En. 95-2412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2412; (2)En. 95-2425 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2425; amd. Sec. 2, Ch. 319, L. 1983; Sec. 46-20-702, MCA 1985; redes. 46-20-701(2) by Code Commissioner, 1987.

Compiler's Comments

Code Commissioner Clarification: Throughout the section, the Code Commissioner has inserted the bracketed references to the convicted person for purposes of clarity.

46-20-702. Renumbered 46-20-701(2) by Code Commissioner, 1987.

46-20-703. Action reviewing court may take. On appeal the reviewing court may:

(1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

(2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) reduce the offense of which the appellant was convicted to a lesser included offense;

(4) reduce the punishment imposed by the trial court; or

(5) order a new trial if justice so requires.

History: En. 95-2426 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 42, Ch. 184, L. 1977; R.C.M. 1947, 95-2426.

46-20-704. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2422 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2422.

46-20-705. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2423 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2423; amd. Sec. 1, Ch. 294, L. 1981.

46-20-706. Termination of appeal — remand. (1) Upon termination of the appeal, the supreme court shall remand the cause with proper instruction together with the opinion of the court. The clerk shall return all original documents to the trial court.

(2) After the cause has been remanded to the trial court, the appellate court has no further jurisdiction of the appeal or the proceedings thereon and all orders necessary to carry the judgment into effect must be made by the court to which the cause is remanded.

History: En. 95-2427 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2427.

46-20-707. Discharge of defendant on reversal of judgment. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must:

(1) if he is in custody, direct him to be discharged therefrom;

(2) if he is on bail, direct that his bail be exonerated; or

(3) if money was deposited instead of bail, direct that it be refunded to the defendant.

History: En. 95-2430 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2430.

CHAPTER 21

POSTCONVICTION HEARING

Part 1 — Initiating Proceedings

46-21-101. When validity of sentence may be challenged.
46-21-102. When petition may be filed.
46-21-103. Commencement of proceedings.
46-21-104. Contents of petition.
46-21-105. Amendment of petition — waiver of grounds for relief.

Part 2 — Action of Court

46-21-201. Proceedings on petition.
46-21-202. Record of proceedings.
46-21-203. Review.

Part 1
Initiating Proceedings

46-21-101. When validity of sentence may be challenged. (1) A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence or the supreme court to vacate, set aside, or correct the sentence or revocation order.

(2) If the sentence was imposed by a justice's, municipal, or city court, the petition must be filed with the district court in the county where the lower court is located.

(3) If the person is in custody, the person may elect to file the petition directly with the supreme court.

History: En. 95-2601 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 43, Ch. 184, L. 1977; R.C.M. 1947, 95-2601; amd. Sec. 1, Ch. 195, L. 1981; amd. Sec. 1, Ch. 211, L. 1985; amd. Sec. 225, Ch. 800, L. 1991.

46-21-102. When petition may be filed. A petition for the relief referred to in 46-21-101 may be filed at any time within 5 years of the date of the conviction.

History: En. 95-2604 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 44, Ch. 184, L. 1977; R.C.M. 1947, 95-2604; amd. Sec. 2, Ch. 195, L. 1981; amd. Sec. 226, Ch. 800, L. 1991.

46-21-103. Commencement of proceedings. The proceeding for relief under 46-21-101 must be commenced by filing a verified petition with the clerk of the appropriate court. The clerk shall docket the petition upon its receipt and bring the petition promptly to the attention of the court.

History: En. 95-2602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2602; amd. Sec. 227, Ch. 800, L. 1991.

46-21-104. Contents of petition. (1) The petition for postconviction relief must:

(a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations;

(b) identify any previous proceedings that the petitioner may have taken to secure relief from his conviction; and

(c) have attached any affidavits, records, or other evidence supporting its allegations or state why the evidence is not attached.

(2) The petition must be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities.

History: En. 95-2603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2603; amd. Sec. 3, Ch. 195, L. 1981; amd. Sec. 228, Ch. 800, L. 1991.

46-21-105. Amendment of petition — waiver of grounds for relief. (1) All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended petition. The original petition may be amended only once. At the request of the state or on its own motion, the court shall set a deadline for the filing of the amended petition. If a hearing will be held, the deadline must be reasonably in advance of the hearing but may not be less than 30 days prior to the date of the hearing. Those grounds for relief not raised in the original or amended petition are waived unless the court on hearing a subsequent petition finds grounds for relief that could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded a direct appeal of the petitioner's conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in the original or amended petition.

History: En. 95-2607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2607; amd. Sec. 4, Ch. 195, L. 1981; amd. Sec. 229, Ch. 800, L. 1991; amd. Sec. 1, Ch. 96, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 96 in (1) inserted second sentence allowing original petition to be amended only once, inserted third sentence concerning the court deadline for the filing of the amended petition, inserted fourth sentence requiring deadline to be reasonably in advance of the hearing, and in last sentence, after "raised", inserted "in the original or amended petition".

Part 2
Action of Court

46-21-201. Proceedings on petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be served upon the county attorney in the county in which the conviction took place and upon the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may grant a prompt hearing on the petition, determine the issue, and make findings of fact and conclusions with respect to the petition.

(2) If a hearing is required or the interests of justice require, the court shall appoint counsel for a petitioner who qualifies for the appointment of counsel under Title 46, chapter 8, part 1.

(3) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

(4) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(5) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed.

History: En. 95-2605 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 45, Ch. 184, L. 1977; R.C.M. 1947, 95-2605; amd. Sec. 5, Ch. 195, L. 1981; amd. Sec. 230, Ch. 800, L. 1991.

46-21-202. Record of proceedings. A court that hears a petition pursuant to this chapter shall keep a record of the proceedings and enter its findings and conclusions.

History: En. 95-2606 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 46, Ch. 184, L. 1977; R.C.M. 1947, 95-2606; amd. Sec. 231, Ch. 800, L. 1991.

46-21-203. Review. Either the petitioner or the prosecution may appeal to the supreme court from an order entered on a petition. The appeal must be taken within 60 days of the entry of the order.

History: En. 95-2608 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 47, Ch. 184, L. 1977; R.C.M. 1947, 95-2608; amd. Sec. 6, Ch. 195, L. 1981; amd. Sec. 232, Ch. 800, L. 1991.

CHAPTER 22

HABEAS CORPUS

Part 1 — Availability of Writ

46-22-101. Applicability of writ of habeas corpus.
46-22-102. No release for technical defects.
46-22-103. Writ for purpose of bail.

Part 2 — Issuance of Writ

46-22-201. Application for writ of habeas corpus.
46-22-202. Granting writ of habeas corpus.
46-22-203. Writ granted without delay.
46-22-204. Writ and process may issue at any time.
46-22-205. Form of writ.
46-22-206. Service of writ.

Part 3 — Return of Writ, Hearing, Appeal

46-22-301. Return of service.
46-22-302. Appearance of petitioner.
46-22-303. Refusal to obey writ — contempt.
46-22-304. Hearing on return.
46-22-305. Production of evidence.
46-22-306. Disposition of petitioner.
46-22-307. Appeal by prosecution.

Chapter Cross-References

Right of habeas corpus, Art. II, sec. 19, Mont. Const.

Part 1

Availability of Writ

46-22-101. Applicability of writ of habeas corpus. (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint.

(2) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense

in a court of record and has exhausted the remedy of appeal. The relief under this chapter is not available to attack the legality of an order revoking a suspended or deferred sentence.

History: **En. 95-2701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2701; amd. Sec. 7, Ch. 195, L. 1981; amd. Sec. 2, Ch. 211, L. 1985; amd. Sec. 233, Ch. 800, L. 1991.**

46-22-102. No release for technical defects. A person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

History: **En. 95-2716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2716; amd. Sec. 234, Ch. 800, L. 1991.**

46-22-103. Writ for purpose of bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

History: **En. 95-2702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2702.**

Part 2

Issuance of Writ

46-22-201. Application for writ of habeas corpus. (1) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf. It must specify:

(a) that the petitioner is unlawfully imprisoned or restrained of liberty;

(b) why the imprisonment or restraint is unlawful; and

(c) where and by whom the petitioner is confined or restrained.

(2) All parties must be named if they are known or otherwise described so that they may be identified.

(3) The petition must be verified by the oath or affirmation of the party making the application.

History: **En. 95-2703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2703; amd. Sec. 25, Ch. 116, L. 1979; amd. Sec. 235, Ch. 800, L. 1991.**

46-22-202. Granting writ of habeas corpus. (1) A writ of habeas corpus may be granted by any justice of the supreme court or by any district court judge upon petition by or on behalf of any person restrained of liberty within the justice's or judge's jurisdiction.

(2) When a writ of habeas corpus is issued, it may be made returnable before the issuing court.

History: **En. 95-2704 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2704; amd. Sec. 26, Ch. 116, L. 1979; amd. Sec. 236, Ch. 800, L. 1991.**

Cross-References

Individual power of Supreme Court Justices to issue Writs of Habeas Corpus, 3-2-212.

District Court may issue and determine at chambers, 3-5-311, 3-5-312.

46-22-203. Writ granted without delay. Any justice or judge authorized to grant a writ of habeas corpus shall grant the writ without delay if it appears that a writ ought to issue.

History: **En. 95-2705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2705; amd. Sec. 237, Ch. 800, L. 1991.**

46-22-204. Writ and process may issue at any time. The writ of habeas corpus or any associated process may be issued and served on any day or at any time.

History: En. 95-2715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2715; amd. Sec. 238, Ch. 800, L. 1991.

Cross-References

Court actions permitted on nonjudicial days, 3-1-302.

46-22-205. Form of writ. (1) The writ of habeas corpus must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command that person to have the petitioner before the judge before whom the writ is returnable at a time and place specified.

(2) The issue or issues to be determined upon return of the writ may be stated either in the writ or in an order attached to the writ. If the issues to be determined are not stated in the writ or in an attached order, then a copy of the petition must be attached to the writ.

History: En. 95-2707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2707; amd. Sec. 239, Ch. 800, L. 1991.

46-22-206. Service of writ. (1) The writ of habeas corpus must be served upon the person to whom it is directed. If the writ is directed to a state institution, a copy of the writ must be served upon the attorney general. If the writ is directed to a county facility, a copy of the writ must be served upon the county attorney.

(2) The writ must be served by the clerk of court, the sheriff, or any other person directed to do so by the court.

(3) The writ must be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the judge.

History: En. 95-2708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2708; amd. Sec. 240, Ch. 800, L. 1991.

Cross-References

Procedure for service of summons and writ, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Return of Writ, Hearing, Appeal

46-22-301. Return of service. (1) The person upon whom the writ is served shall make a return and state in that return:

(a) (i) whether the petitioner is in that person's custody or under that person's power or restraint; and

(ii) if the petitioner is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(b) if the petitioner has been transferred to the custody of or otherwise restrained by another, to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

(2) The return must be signed and verified by oath unless the person making the return is a sworn public officer making a return in an official capacity.

History: **En. 95-2709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2709; amd. Sec. 241, Ch. 800, L. 1991.**

46-22-302. Appearance of petitioner. (1) The person commanded by the writ shall bring the petitioner before the court as required by the writ unless the petitioner cannot be brought before the court without danger to the petitioner's health. Sickness or infirmity must be confirmed in an affidavit by the person having custody of the petitioner.

(2) If the court is satisfied with the truth of the affidavit, the court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present.

History: **En. 95-2710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2710; amd. Sec. 242, Ch. 800, L. 1991.**

46-22-303. Refusal to obey writ — contempt. If the person commanded by the writ refuses to obey, that person must be adjudged in contempt of court.

History: **En. 95-2706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2706; amd. Sec. 243, Ch. 800, L. 1991.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

46-22-304. Hearing on return. The court before whom the writ is returned shall immediately proceed to hear and examine the return. The hearing may be summary in nature.

History: **En. 95-2711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2711; amd. Sec. 244, Ch. 800, L. 1991.**

46-22-305. Production of evidence. Evidence may be produced and compelled in preparation of a hearing as provided in Title 46, chapter 22.

History: **En. 95-2712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2712; amd. Sec. 245, Ch. 800, L. 1991.**

Cross-References

Procedure for acquiring evidence, Rules 26, 28 through 37, M.R.Civ.P. (see Title 25, ch. 20).

46-22-306. Disposition of petitioner. (1) If the court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper.

(2) If the court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

History: **En. 95-2713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2713; amd. Sec. 246, Ch. 800, L. 1991.**

46-22-307. Appeal by prosecution. An appeal may be taken to the supreme court by the prosecution from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal as provided in 46-9-107. The appeal must be taken in the same manner as in civil actions.

History: **En. 95-2714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2714; amd. Sec. 247, Ch. 800, L. 1991.**

Cross-References

Procedure for appeal to Supreme Court, Title 25, ch. 12; Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 23

PROBATION, PAROLE, AND CLEMENCY

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Chapter Cross-References

Effect of executive reorganization, 2-15-131 through 2-15-137.

Jail work release program, Title 46, ch. 18, part 7.

Part 1

General Provisions — Board of Pardons

46-23-101. Short title. Parts 1, 2, 3, and 10 of this chapter shall be known and may be cited as the "Parole and Executive Clemency Act".

History: En. Sec. 1, Ch. 153, L. 1955; Sec. 94-9821, R.C.M. 1947; redes. 95-3203 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 2, Ch. 333, L. 1975; R.C.M. 1947, 95-3203.

46-23-102. Cases of juveniles excluded. The provisions of parts 1, 2, 3, and 10 of this chapter shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955; Sec. 94-9850, R.C.M. 1947; redes. 95-3232 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3232.

46-23-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of the prisoner's term, subject to conditions imposed by the board and subject to supervision of the department of corrections.

History: En. Sec. 3, Ch. 153, L. 1955; Sec. 94-9823, R.C.M. 1947; amd. Sec. 1, Ch. 73, L. 1973; redes. 95-3205 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 82, Ch. 120, L. 1974; amd. Sec. 5, Ch. 333, L. 1975; R.C.M. 1947, 95-3205; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 224, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Board substituted "board of pardons and parole" for "board of pardons"; in definition of Department substituted "department of corrections provided for in 2-15-2301" for "department of corrections and human services provided for in Title 2, chapter 15, part 23"; in definition of parole substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

46-23-104. Board of pardons and parole. (1) The board of pardons and parole is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet monthly, and at other times that the board considers necessary, at the state prison.

(3) The principal office of the board is in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

(a) parole eligibility;

(b) plans for release on parole; or

(c) revocation hearings.

History: En. Sec. 2, Ch. 153, L. 1955; Sec. 94-9822, R.C.M. 1947; redes. 95-3204 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 81, Ch. 120, L. 1974; amd. Sec. 3, Ch. 333, L. 1975; R.C.M. 1947, 95-3204; amd. Sec. 1, Ch. 234, L. 1981; amd. Sec. 1, Ch. 300, L. 1987; amd. Sec. 225, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "board of pardons and parole" for "board of pardons"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Board of Pardons established, 2-15-2302.

46-23-105. Legal adviser. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955; Sec. 94-9827, R.C.M. 1947; redes. 95-3209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3209.

46-23-106. Information from courts to board. It is the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons and parole statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. 95-2210 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2210; amd. Sec. 226, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "board of pardons and parole" for "board of pardons"; and made minor changes in style. Amendment effective July 1, 1995.

46-23-107. Orders of board — reviewability. Decisions of the board must be by majority vote. The orders of the board are not reviewable.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(1); amd. Sec. 1, Ch. 188, L. 1989.

46-23-108. Records and reports — confidentiality. The department shall keep a record of the board's acts and decisions available to the public. However, all social records, including the presentence report, the preparole report, and the supervision history obtained in the discharge of official duty by the department, are confidential and may not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may, in its discretion, when the best interests or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the social record or any parts thereof by the prisoner or his attorney.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(2); amd. Sec. 27, Ch. 116, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Criminal justice information, Title 44, ch. 5.

Disclosure of criminal justice information, 44-5-104.

Part 2

Granting of Parole

46-23-201. *(Temporary)* **Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's correctional system, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(4) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

46-23-201. *(Effective July 1, 1997)* **Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's correctional system, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) or 46-18-219, when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(4) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(1), (2); amd. Secs. 1, 2, Ch. 235, L. 1983; amd. Sec. 1, Ch. 451, L. 1985; amd. Sec. 2, Ch. 188, L. 1989; amd. Sec. 2, Ch. 248, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 315, L. 1991; amd. Sec. 3, Ch. 519, L. 1991; amd. Sec. 68, Ch. 10, L. 1993; amd. Sec. 4, Ch. 372, L. 1995; amd. Sec. 17, Ch. 482, L. 1995; amd. Sec. 227, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 372 in (2), near middle after "at least", substituted "one-fourth" for "one-half" and at end deleted "less the good time allowance provided for in 53-30-105. Except as provided in subsection (3), a prisoner designated as a nondangerous offender under 46-18-404 may be paroled after the prisoner has served one-quarter of the prisoner's full term, less the good time allowance provided for in 53-30-105. Any prisoner serving a time sentence may be paroled after the prisoner has served 17 1/2 years of the sentence"; deleted former (3) that read: "(3) A prisoner serving a time sentence under 45-9-109 may not be paroled until the prisoner has served at least one-half of the full term, less the good time allowance provided for in 53-30-105"; in (3), at end after "30 years", deleted "less the good time allowance provided for in 53-30-105"; deleted (6) that read: "(6) Whenever the department of corrections and human services certifies to the board that the population at either the male or female correctional facility has exceeded its designed capacity for 30 consecutive days, the board shall consider the respective male or female prisoners under the jurisdiction of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) through (4)"; deleted (7) that read: "(7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration, the provisions of subsection (6) do not apply"; and adjusted subsection references. Amendment effective April 12, 1995.

Chapter 482 in version effective July 1, 1997, in (1), near middle after "46-18-202(2)", inserted "or 46-18-219".

Chapter 546 in (1) substituted "women's correctional system" for "women's correctional center"; and in (6) substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995. The amendment in subsection (6) was rendered void by the amendment in Ch. 372.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 46-23-201, enacted as sec. 17 of Senate Bill No. 66, are effective July 1, 1997.

46-23-202. Investigation of prisoner by board. (1) Within the 2 months prior to a prisoner's official parole eligibility date, the board shall consider all pertinent information regarding the prisoner, including the circumstances of the offense; the prisoner's previous social history and criminal record; the prisoner's conduct, employment, and attitude in prison; and the reports of any physical and mental examinations that have been made.

(2) Before ordering the parole of any prisoner, the board shall:

(a) conduct a hearing and interview the prisoner. At the time of the hearing, the board shall receive relevant statements from interested persons and any person may be represented by counsel, provided that the board has the power to regulate procedures at all hearings.

(b) permit a victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement may be kept confidential. The board shall consider the victim's statement, along with the information provided under subsection (1), in determining whether to grant parole.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(3); amd. Sec. 1, Ch. 45, L. 1983; amd. Sec. 4, Ch. 579, L. 1993; amd. Sec. 22, Ch. 125, L. 1995; amd. Sec. 5, Ch. 372, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 125 in (2) substituted current (2)(a) requiring Board to conduct hearing and receive relevant statements from interested persons for "interview the prisoner"; inserted (2)(b) requiring Board to receive and consider victim's statement; and made minor changes in style.

Chapter 372 in (1), near beginning after "date", deleted "or within 2 months following the date a prisoner becomes eligible pursuant to 53-30-105(5)"; and made minor changes in style. Amendment effective April 12, 1995.

46-23-203. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner over whom the board has jurisdiction under parts 1, 2, 3, and 10 of this chapter, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955; Sec. 94-9834, R.C.M. 1947; redes. 95-3216 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3216.

46-23-204. Repealed. Sec. 40, Ch. 125, L. 1995.

History: En. Sec. 15, Ch. 153, L. 1955; Sec. 94-9835, R.C.M. 1947; redes. 95-3217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3217.

46-23-205. Subpoenas — issuance, service. (1) The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof.

(2) Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law enforcement officer.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

46-23-206. Enforcement of subpoenas by court. In case of contumacy by or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered or there to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-207. Penalty for disobedience. Any person who shall without just cause fail or refuse to attend and testify, to answer any lawful inquiry, or to produce records, books, papers, and other documents if it is in his power to do so in obedience to a subpoena of the board or any member thereof shall be punished by a fine of not more than $200 or by imprisonment for not longer than 60 days or by both such fine and imprisonment. Each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-208 and 46-23-209 reserved.

46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order a person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome that renders the person highly unlikely to present a clear and present danger to public safety;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

(2) The diagnosis must be reviewed and accepted by the department before the board may consider granting a medical parole.

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person is likely to pose a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(6) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to nonmedical parole.

History: En. Sec. 1, Ch. 248, L. 1991; amd. Sec. 1, Ch. 381, L. 1993; amd. Sec. 23, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 in (6) deleted reference to 46-23-204.

46-23-211 through 46-23-214 reserved.

46-23-215. Conditions of parole. (1) A prisoner while on parole remains in the legal custody of the institution from which the prisoner was released but is subject to the orders of the board.

(2) When an order for parole is issued, it must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant the prisoner a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the prison and is subject to all other conditions recited by the board.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977;

R.C.M. 1947, 95-3214(4); amd. Sec. 1, Ch. 1, Sp. L. 1982; amd. Sec. 3, Ch. 392, L. 1987; amd. Sec. 24, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 in (2) inserted second sentence relating to restitution; and made minor changes in style.

46-23-216. *(Temporary)* **Duration of parole.** (1) A prisoner on parole is considered released on parole until the expiration of the maximum term or terms for which the prisoner was sentenced, less the good time allowance as provided for in 53-30-105.

(2) The period served on parole or conditional release must be considered service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of the release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

46-23-216. *(Effective January 31, 1997)* **Duration of parole.** (1) A prisoner on parole is considered released on parole until the expiration of the maximum term or terms for which the prisoner was sentenced.

(2) The period served on parole or conditional release must be considered service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of the release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: (1)En. Sec. 13, Ch. 153, L. 1955; Sec. 94-9833, R.C.M. 1947; redes. 95-3215 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 87, Ch. 120, L. 1974; amd. Sec. 4, Ch. 312, L. 1975; amd. Sec. 61, Ch. 184, L. 1977; amd. Sec. 4, Ch. 340, L. 1977; Sec. 95-3215, R.C.M. 1947, 95-3215; (2)En. Sec. 20, Ch. 153, L. 1955; Sec. 94-9840, R.C.M. 1947; redes. 95-3222 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3222, R.C.M. 1947; R.C.M. 1947, 95-3215, 95-3222; amd. Secs. 6, 7, Ch. 372, L. 1995.

Compiler's Comments

1995 Amendment: (Temporary version) Chapter 372 in (1), near beginning after "parole", deleted "who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance"; and made minor changes in style. Amendment effective April 12, 1995.

(Version effective January 31, 1997) In (1), near beginning after "parole", deleted "who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance" and at end, after "sentenced", deleted "less the good time allowance as provided for in 53-30-105"; and made minor changes in style.

46-23-217. Service of term for additional crime. A prisoner who commits a crime while imprisoned in the state prison or while released on parole or under the supervised release program and who is convicted and sentenced for the crime shall serve the sentence consecutively with the remainder of the original sentence. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence.

History: **En. Sec. 19, Ch. 153, L. 1955; Sec. 94-9839, R.C.M. 1947; redes. 95-3221 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3221; amd. Sec. 28, Ch. 116, L. 1979; amd. Sec. 3, Ch. 188, L. 1989; amd. Sec. 8, Ch. 372, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 372 at end of first and second sentences, after "sentence", deleted "as provided in 46-18-401". Amendment effective April 12, 1995.

46-23-218. Authority of board to adopt rules. The board may adopt any other rules it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions to be imposed upon parolees.

History: **En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(5).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3
Executive Clemency

Part Cross-References

Pardons, Art. VI, sec. 12, Mont. Const.

46-23-301. Cases of executive clemency — application for clemency — definitions. (1) (a) "Clemency" means kindness, mercy, or leniency that may be exercised by the governor towards a convicted person. The governor may grant clemency in the form of:

(i) the remission of fines or forfeitures;

(ii) the commutation of a sentence to one which is less severe;

(iii) respite; or

(iv) pardon.

(b) "Pardon" means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) A person convicted of a crime need not exhaust judicial or administrative remedies before he files an application for clemency. The board shall consider cases of executive clemency only upon application. All applications for executive clemency must be made to the board. Applications may be filed only by the person convicted of the crime, by his attorney acting on his behalf and with his consent, or by a court-appointed next friend, guardian, or conservator acting on his behalf. The board shall cause an investigation to be made of and base any recommendation it makes on:

(a) all the circumstances surrounding the crime for which the applicant was convicted; and

(b) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(3) The board shall advise the governor and recommend action to be taken. The board may recommend that clemency be granted or denied. In noncapital cases, if the board recommends that clemency be denied, the application must not be forwarded to the governor and the governor may not take action on the

case. In capital cases, the board shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the board, but he shall review the record of the hearing and the board's recommendation before he grants or denies clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to him.

History: En. Sec. 21, Ch. 153, L. 1955; Sec. 94-9841, R.C.M. 1947; amd. Sec. 2, Ch. 73, L. 1973; redes. 95-3223 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3223; amd. Sec. 1, Ch. 561, L. 1989.

46-23-302. Order for hearing on application for executive clemency. After the board has duly considered an application for executive clemency and has by majority vote favored a hearing, it must pass an order in substance as follows:

"Whereas, the Board of Pardons and Parole has officially received an application for executive clemency concerning...., a convict confined in the state prison (or to one...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of.... committed at...., in the county of...., State of Montana, on the.... day of...., 19.., and sentenced for a term of.... years.

Therefore, it is ordered that...., the.... day of...., 19.., is set for the consideration of the executive clemency matter; and all persons having an interest in the matter desiring to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture are notified to be present at.... o'clock of that day, at.....

Further, ordered that a copy of this order be printed and published in the.... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at...., in the county of...., once each week for 2 weeks beginning...., 19.., and ending....."

History: En. Sec. 22, Ch. 153, L. 1955; Sec. 94-9842, R.C.M. 1947; amd. Sec. 3, Ch. 73, L. 1973; redes. 95-3224 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3224; amd. Sec. 2, Ch. 561, L. 1989; amd. Sec. 228, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in Whereas clause substituted "Board of Pardons and Parole" for "Board of Pardons"; and made minor changes in style. Amendment effective July 1, 1995.

46-23-303. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated at least once a week for 2 weeks prior to the hearing and, at the same time, cause to be deposited in the post office at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the applicant.

History: En. Sec. 23, Ch. 153, L. 1955; Sec. 94-9843, R.C.M. 1947; redes. 95-3225 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3225; amd. Sec. 3, Ch. 561, L. 1989.

46-23-304. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955; Sec. 94-9844, R.C.M. 1947; redes. 95-3226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3226.

46-23-305. When publication not necessary. No publication need be made as provided in 46-23-302, 46-23-303, and 46-23-304 in the following cases:

(1) when there is imminent danger of the death of the person convicted or imprisoned;

(2) when the term of imprisonment of the applicant is within 10 days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955; Sec. 94-9846, R.C.M. 1947; amd. and redes. 95-3228 by Sec. 28, Ch. 513, L. 1973; R.C.M. 1947, 95-3228.

46-23-306. Record of hearing. At the hearing the board must cause to be kept a record showing:

(1) the names of all persons appearing before the board on behalf of the person seeking clemency from the governor;

(2) the names of all persons appearing before the board in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the board;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955; Sec. 94-9845, R.C.M. 1947; redes. 95-3227 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3227; amd. Sec. 29, Ch. 116, L. 1979.

46-23-307. Decision of board. Within 30 days after the hearing of any capital case or in noncapital cases where the decision is made to recommend clemency be granted, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955; Sec. 94-9847, R.C.M. 1947; redes. 95-3229 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3229; amd. Sec. 4, Ch. 561, L. 1989.

46-23-308 through 46-23-314 reserved.

46-23-315. Authority of governor to grant respite — application. The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for the time that the governor thinks proper. The governor may grant a respite upon application of a person authorized to apply for executive clemency and prior to any review or recommendation by the board of pardons and parole. A respite must be of temporary duration for a definite period of time. Any respite that is granted that stays the execution of a death warrant has the effect of postponing the execution of the warrant. In that case, if clemency is not granted, the death warrant is again in effect at the expiration of the period of respite and the execution must take place on the date of expiration of the respite.

History: En. Sec. 28, Ch. 153, L. 1955; Sec. 94-9848, R.C.M. 1947; redes. 95-3230 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3230; amd. Sec. 5, Ch. 561, L. 1989; amd. Sec. 229, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 at end of second sentence substituted "board of pardons and parole" for "board of pardons"; and made minor changes in style. Amendment effective July 1, 1995.

46-23-316. Governor's report to legislature. The governor shall, as provided in 5-11-210, report to the legislature each case of remission of fine or forfeiture, respite, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955; Sec. 94-9849, R.C.M. 1947; redes. 95-3231 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3231; amd. Sec. 6, Ch. 561, L. 1989; amd. Sec. 37, Ch. 112, L. 1991.

Part 4

Supervised Release Program

46-23-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Applicant" means any prisoner who is eligible under 46-23-411 and who signs an application to participate in the supervised release program.

(2) "Board" means the board of pardons and parole provided for in 2-15-2302.

(3) "Department" means the department of corrections provided for in 2-15-2301.

(4) "Prisoner" means a person sentenced by a state district court to a term of confinement in the state prison.

(5) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the supervised release program.

(6) "State prison" means the Montana state prison at Deer Lodge or any adult correctional facility designated by the department.

(7) "Supervising agent" means a probation and parole officer of the department.

History: En. Sec. 2, Ch. 288, L. 1969; amd. Sec. 92, Ch. 120, L. 1974; amd. Sec. 2, Ch. 496, L. 1975; R.C.M. 1947, 95-2218; amd. Sec. 1, Ch. 583, L. 1981; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 230, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Board substituted "board of pardons and parole" for "board of pardons"; and in definition of Department substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

46-23-402 through 46-23-404. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-402. En. Sec. 1, Ch. 288, L. 1969; amd. Sec. 1, Ch. 496, L. 1975; R.C.M. 1947, 95-2217; amd. Sec. 30, Ch. 116, L. 1979; amd. Sec. 1, Ch. 635, L. 1979.

46-23-403. En. Sec. 8, Ch. 288, L. 1969; amd. Sec. 8, Ch. 496, L. 1975; amd. Sec. 39, Ch. 184, L. 1977; R.C.M. 1947, 95-2224.

46-23-404. En. Sec. 9, Ch. 288, L. 1969; R.C.M. 1947, 95-2225.

46-23-405. Establishing program — rules. The department shall establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana Administrative Procedure Act), to implement and control the program. Rules must include guidelines for:

(1) prisoner eligibility;

(2) prisoner participation in a recognized educational, treatment, or training program or work program in conjunction with any of the programs listed in this subsection;

(3) approval of the sponsor;

(4) review of a board decision to deny an applicant admittance into the program;

(5) supervision of the prisoner by or under the direction of a supervising agent while the prisoner is in the program;

(6) implementation of a plan for the prisoner to satisfy any restitution or community service obligation imposed as part of the prisoner's sentence under 46-18-201;

(7) conducting revocation hearings;

(8) establishment of a program by the prisoner; and

(9) any other provisions necessary to implement this part.

History: En. Secs. 3, 7, Ch. 288, L. 1969; amd. Secs. 3, 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2219, 95-2223(1); amd. Sec. 2, Ch. 635, L. 1979; amd. Sec. 2, Ch. 583, L. 1981; amd. Sec. 25, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 inserted (6) relating to restitution or community service; and made minor changes in style.

46-23-406. Repealed. Sec. 13, Ch. 583, L. 1981.

History: En. Sec. 7, Ch. 288, L. 1969; amd. Sec. 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2223(2).

46-23-407 through 46-23-410 reserved.

46-23-411. *(Temporary)* **Application to participate — eligibility.** (1) Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the supervised release program if he has served at least one-half of the time required to be considered for parole and not more than 24 months remain before he is eligible for parole.

(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department.

46-23-411. *(Effective July 1, 1997)* **Application to participate — eligibility.** (1) Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2) or 46-18-219, may apply to participate in the supervised release program if the prisoner has served at least one-half of the time required to be considered for parole and not more than 24 months remain before the person is eligible for parole.

(2) Prisoners serving sentences under 46-18-219 or with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department.

History: En. Sec. 4, Ch. 288, L. 1969; amd. Sec. 4, Ch. 496, L. 1975; amd. Sec. 2, Ch. 580, L. 1977; R.C.M. 1947, 95-2220; amd. Sec. 3, Ch. 635, L. 1979; amd. Sec. 3, Ch. 583, L. 1981; amd. Sec. 1, Ch. 445, L. 1989; amd. Sec. 18, Ch. 482, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 482 in version effective July 1, 1997, in (1), near middle after "46-18-202(2)", inserted "or 46-18-219"; in (2), after "sentences", inserted "under 46-18-219"; and made minor changes in style.

Coordination Instruction — Effective Dates: Section 21, Ch. 482, L. 1995, provided: "(1) If House Bill No. 357 and [this act] [Senate Bill No. 66] are both passed and approved:

(a) [sections 1 through 18] of [this act] are effective July 1, 1997; and

(b) the sentencing commission shall include recommendations for implementing the public policy contained in [sections 1 through 18] of [this act].

(2) [Sections 19, 20, and this section] [enacted as codification and coordination instructions] are effective July 1, 1995.

(3) If House Bill No. 357 is not passed and approved, then this section is void." House Bill No. 357 was approved March 31, 1995, as Ch. 306, L. 1995. Therefore, the amendments to 46-23-411, enacted as sec. 18 of Senate Bill No. 66, are effective July 1, 1997.

46-23-412. Board's action on application. The board shall approve or deny the application of each prisoner after careful study of the prisoner's release plans, criminal history, and all other pertinent case material. The board shall grant the applicant a hearing consistent with the procedural rules adopted by it for parole hearings pursuant to 46-23-218.

History: En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(1), (5); amd. Sec. 4, Ch. 583, L. 1981.

46-23-413 through 46-23-415. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-413. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(7).

46-23-414. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(2) thru (4), (6).

46-23-415. En. Sec. 6, Ch. 288, L. 1969; amd. Sec. 6, Ch. 496, L. 1975; R.C.M. 1947, 95-2222.

46-23-416 through 46-23-420 reserved.

46-23-421. Responsibility of department and supervising agent. The department shall be responsible for the activities of a prisoner participating in a supervised release program under this part. The department may delegate jurisdictional supervision to a supervising agent who shall be responsible for the activities of the prisoner during his supervised release.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(1); amd. Sec. 5, Ch. 583, L. 1981.

Cross-References

Per diem payments for residential correctional programs, 53-1-501.

46-23-422. Violation of supervised release program by prisoner — revocation. (1) If a prisoner in a supervised release program violates a condition established for the program, the department may issue a warrant for his arrest. Upon a second or subsequent violation, the department shall issue a warrant for the prisoner's arrest.

(2) The prisoner shall be granted a hearing within a reasonable time on or near the site of the alleged violation to determine whether a violation of the supervised release conditions occurred. The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the department. The prisoner shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to onsite hearings for parole revocation. If probable cause is established that a violation of the supervised release has occurred, the prisoner shall be returned to the state prison.

(3) Within a reasonable time after the prisoner's return to the state prison, the board shall conduct a revocation proceeding in accordance with rules established under 46-23-405.

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a supervising agent and a new supervised release program shall be worked out.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(2); amd. Sec. 4, Ch. 635, L. 1979; amd. Sec. 2, Ch. 328, L. 1981; amd. Sec. 6, Ch. 583, L. 1981.

46-23-423 through 46-23-425. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-423. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(3).

46-23-424. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(4).

46-23-425. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(5); amd. Sec. 5, Ch. 635, L. 1979.

46-23-426. Escape. A person convicted of escape from a supervised release program is punishable as provided in 45-7-306 and must serve the sentence for escape consecutively with the remainder of the original sentence.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(6); amd. Sec. 7, Ch. 583, L. 1981; amd. Sec. 9, Ch. 372, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 372 at end deleted "as provided in 46-18-401"; and made minor changes in style. Amendment effective April 12, 1995.

Part 5

Registration of Sexual and Violent Offenders

Part Cross-References

Definitions, 44-5-103.

Dissemination of public criminal justice information, 44-5-301.

Duties of Court and Department upon release of sexual offender, 46-18-254.

Employment restrictions — sexual offenders, 46-18-255.

46-23-501. Short title. Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual or Violent Offender Registration Act".

History: En. Sec. 1, Ch. 293, L. 1989; amd. Sec. 4, Ch. 407, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 407 after ""Sexual" inserted "or Violent".

46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

(4) "Violent offense" means:

(a) any violation of 45-5-102, 45-5-103, 45-5-202, 45-5-302, 45-5-303, 45-5-401, or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (4)(a).

History: En. Sec. 2, Ch. 293, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 5, Ch. 407, L. 1995; amd. Sec. 231, Ch. 546, L. 1995; amd. Secs. 7, 12, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 407 in (2), in two places, inserted "or violent"; in (3)(a) inserted reference to 45-5-504(2)(c) and after "45-5-505" inserted parenthetical referring to deviate sexual conduct with an animal; and inserted definition of violent offense. The amendment in (3)(a) was rendered void pursuant to sec. 12, Ch. 550, L. 1995, a coordination section.

Chapter 546 in definition of Department substituted "department of corrections provided for in 2-15-2301" for "department of corrections and human services provided for in Title 2, chapter 15, part 23". Amendment effective July 1, 1995.

Chapter 550 in (3)(a), after "45-5-503", substituted "45-5-504(2)(c)" for "45-5-505".

Coordination: Section 12, Ch. 550, L. 1995, provided: "If [this act] and House Bill No. 214 are both passed and approved, then the amendment to 46-23-502(3)(a) in House Bill No. 214 is void." House Bill No. 214 was approved as Ch. 407, L. 1995, on April 13, 1995. Although the amendment to 46-23-502(3)(a) in House Bill No. 214 is void, a similar amendment was made by Ch. 550.

46-23-503. Release of sexual or violent offender from place of confinement — duties of official in charge. A sexual of violent offender who is released from the custody of the department of corrections must be informed in writing prior to release of the duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall obtain the address at which the person expects to reside upon the person's release and report the address to the department of corrections. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

History: En. Sec. 4, Ch. 293, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 407, L. 1995; amd. Sec. 232, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 407 near beginning, after "sexual", inserted "or violent"; and made minor changes in style.

Chapter 546 in first sentence, after "department of corrections", deleted "and human services or the department of family services" and in second sentence substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

46-23-504. Persons required to register — procedure. (1) A sexual or violent offender shall, within 14 days of conviction or release from prison or within 14 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 14 days or more, register, as required under 46-18-254, 46-18-255, and this part, with the chief of police of the municipality or the sheriff of the county if the offender resides in an area other than a municipality.

(2) At the time of registering, the person shall sign a statement in writing giving the information required by the department. The chief of police or sheriff shall fingerprint the person, unless the person's fingerprints are on file with the department of justice, and shall photograph the person. Within 3 days, the chief of police or sheriff shall send copies of the statement, fingerprints, and photographs to the department and the department of justice and to the sheriff of the county where the person resides, if registration is with the chief of police.

(3) The person registered under this section is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration.

(4) The clerk of the district court in the county in which a person is convicted of a sexual or violent offense shall notify the sheriff in that county of the conviction within 14 days after entry of the judgment.

History: En. Sec. 5, Ch. 293, L. 1989; amd. Sec. 7, Ch. 407, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 407 in (1), near beginning after "sexual", inserted "or violent" and substituted "conviction or release from prison or within 14 days of entering a county of this state for the purpose of residing or setting up a temporary domicile for 14 days or more" for "coming into a county in which he resides or is temporarily domiciled"; inserted (2) relating to signing an information statement, to fingerprints, to photos, and to sending the statement, fingerprints, and photos to certain agencies; inserted (3) relating to the person's payment of registration costs; inserted (4) requiring notice to the Sheriff after entry of judgment; and made minor changes in style.

46-23-505. Notice of change of address — duty to inform — forwarding of information. If a person required to register under 46-18-254, 46-18-255, and this part changes residence, the person shall within 10 days give written notification of the person's new address to the law enforcement agency with whom the person last registered. The law enforcement agency shall, within 3 days after receipt of the information, forward it to the department, the department of justice, and the local law enforcement agency having jurisdiction over the new place of residence and shall forward a copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency having jurisdiction over the new place of residence.

History: En. Sec. 6, Ch. 293, L. 1989; amd. Sec. 8, Ch. 407, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 407 in second sentence inserted reference to the Department of Justice and at end inserted "and shall forward a copy of the statement, fingerprints, and photographs of the person to the local law enforcement agency having jurisdiction over the new place of residence"; and made minor changes in style.

46-23-506. Duration of registration. (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for the remainder of the person's life, except as provided in subsection (2) of this section or during a period of time during which the person is in prison.

(2) At any time after 10 years since the date of the offender's last conviction of a sexual offense, the offender may petition a district court for an order relieving the offender of the duty to register under 46-18-254, 46-18-255, and this part. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society.

(3) The offender may move that all or part of the proceedings in a hearing under subsection (2) be closed to the public, or the judge may take action on

the judge's own motion. Notwithstanding closure of the proceeding to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

History: En. Sec. 7, Ch. 293, L. 1989; amd. Sec. 9, Ch. 407, L. 1995; amd. Sec. 8, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 407 in (1) substituted compliance for the rest of the person's life, except as provided in subsection (2), or during a period of time during which the person is in prison for compliance for 10 years after conviction if not imprisoned during those 10 years and for 10 years after release from prison if imprisoned during the initial 10 years; and substituted (2) relating to a petition for relief from registration and proceeding on the petition for former (2) that provided that the registration duty terminates 10 years after the initial registration if the person commits no act during that time requiring registration.

Chapter 550 in (1), near beginning after "part for", substituted "the remainder of the person's life, except as provided in subsection (2) of this section or during a period of time during which the person is in prison" for "a period of 10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison"; and substituted (2) and (3) allowing a petition for relief from registration for former language that read: "A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part."

46-23-507. Penalty. A sexual or violent offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not more than 5 years or may be fined not more than $10,000, or both.

History: En. Sec. 8, Ch. 293, L. 1989; amd. Sec. 10, Ch. 407, L. 1995; amd. Sec. 9, Ch. 550, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 407 near beginning inserted "or violent" and increased penalty from "not less than 90 days or a fine not to exceed $250, or both" to "not more than 5 years or may be fined not more than $10,000, or both".

Chapter 550 near end substituted "more than 5 years or may be fined not more than $10,000" for "less than 90 days or a fine not to exceed $250".

46-23-508. Dissemination of information in register. Information in the register maintained under 46-18-254 and this part is confidential criminal justice information, as defined in 44-5-103, except that:

(1) the name of a registered sexual offender is public criminal justice information, as defined in 44-5-103; and

(2) before releasing from a state prison an inmate who is a sexual offender, if the department believes that release of information concerning the inmate is necessary for public protection, the department shall petition the district court for the judicial district in which the prison is located or for the judicial district in which the inmate intends to reside for an order allowing the department to release relevant and necessary register information regarding the inmate to the public. The court shall grant the order if the court finds that the information is necessary for public protection.

History: **En. Sec. 11, Ch. 407, L. 1995; En. Sec. 10, Ch. 550, L. 1995.**

Parts 6 through 9 reserved

Part 10

Supervision of Probationers and Parolees

46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of the prisoner's term, subject to conditions imposed by the board and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

History: **En. 95-3301 by Sec. 7, Ch. 333, L. 1975; R.C.M. 1947, 95-3301; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 233, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Board substituted "board of pardons and parole" for "board of pardons"; in definition of Department substituted "department of corrections provided for in 2-15-2301" for "department of corrections and human services provided for in Title 2, chapter 15, part 23"; and made minor changes in style. Amendment effective July 1, 1995.

46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

History: **En. 95-3302 by Sec. 8, Ch. 333, L. 1975; R.C.M. 1947, 95-3302; amd. Sec. 1, Ch. 639, L. 1989.**

46-23-1003. Qualifications of probation and parole officers. (1) Probation and parole officers shall have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer must, through a source approved by his employer, obtain 16 hours a year of training in subjects relating to the

powers and duties of probation officers. In addition, each probation and parole officer must receive training in accordance with standards adopted by the board of crime control, as provided in 44-4-301. The training must be at the Montana law enforcement academy unless the board finds that training at some other place is more appropriate.

History: En. 95-3302.1 by Sec. 4, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.1; amd. Sec. 2, Ch. 544, L. 1987; amd. Sec. 2, Ch. 809, L. 1991.

46-23-1004. Duties of department. The department is responsible for any investigation and supervision requested by the board or the courts. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, that are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the interstate compact for the supervision of parolees and probationers; and

(9) notify the employer of a probationer or parolee if the probationer or parolee has been convicted of an offense involving theft from an employer.

History: En. Sec. 8, Ch. 153, L. 1955; Sec. 94-9828, R.C.M. 1947; redes. 95-3210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 85, Ch. 120, L. 1974; Sec. 95-3210, R.C.M. 1947; amd. and redes. 95-3303 by Sec. 9, Ch. 333, L. 1975; R.C.M. 1947, 95-3303; amd. Sec. 1, Ch. 499, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 499 inserted (9) requiring notification of an employer if a probationer or parolee has been convicted of theft from an employer; and made minor changes in style.

46-23-1005. Misdemeanor probation offices — officers — costs. (1) A local government may establish a misdemeanor probation office associated with a justice's court, municipal court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence compliance and restitution payments. An offender is considered a fugitive under the conditions provided in 46-23-1014.

(2) A local government may appoint misdemeanor probation officers and other employees necessary to administer this section. Misdemeanor probation officers:

(a) must have the minimum training required in 46-23-1003;

(b) shall follow the supervision guidelines required in 46-23-1011; and

(c) may order the arrest of an offender as provided in 46-23-1012.

(3) An offender who is convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual cost of probation

supervision over the offender's sentence must be paid by the offender unless the offender can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in addition to any other fines, restitution, or counseling ordered.

History: **En. Sec. 18, Ch. 350, L. 1995.**

46-23-1006 through 46-23-1010 reserved.

46-23-1011. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation must be signed by the probationer and given to the probationer and the probationer's probation and parole officer, who shall report on the probationer's progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice must be given to the probation and parole officer before any condition is modified, and the officer must be given an opportunity to present the officer's ideas or recommendations on any modification. A copy of a modification of conditions must be delivered to the probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only as provided under the provisions of 46-18-246.

(5) The probation and parole officer shall keep records as the department or the court may require.

(6) (a) Upon recommendation of the probation and parole officer, a court may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if the court determines that a conditional discharge from supervision is in the best interests of the probationer and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the court that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the court may not place an offender on probation under supervision by that district office unless it grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the court for conditional discharge. The court may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office.

History: **En. 95-3304 by Sec. 10, Ch. 333, L. 1975; R.C.M. 1947, 95-3304; amd. Sec. 1, Ch. 195, L. 1989; amd. Sec. 5, Ch. 579, L. 1993; amd. Sec. 26, Ch. 125, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 125 at end of (4) inserted sentence relating to waiver or modification of restitution; at end of (6)(a) inserted phrase relating to unreasonable risk of danger to victim; and made minor changes in style.

46-23-1012. Arrest when violations of probation alleged. (1) At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court.

(2) Any probation and parole officer may arrest such defendant without a warrant or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Provisions regarding release on bail of persons charged with crime shall be applicable to the defendants arrested under these provisions.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1013. Action of court after arrest. (1) Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary.

(2) If the violation is established, the court may continue to revoke the probation or suspension of sentence and may require him to serve the sentence imposed or any lesser sentence and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(3) If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest or any part of it shall be counted as time served on probation or suspended sentence shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1014. When probationer considered a fugitive. A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court shall after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from or to have fled from justice.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1015 through 46-23-1020 reserved.

46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole periods in accordance with the conditions set by the board.

(2) The department shall assign personnel to assist a person who is eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of parole must be signed by the parolee and given to the parolee and to the parolee's probation and parole officer, who shall report on the parolee's progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist the parolee in adjusting to community life, and inform the parolee of the restoration of rights on successful completion of the sentence.

(5) The probation and parole officer shall keep records as the board or department may require. All records must be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of the parolee's sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Subsection (6)(a) does not prohibit the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

(c) If the department certifies to the board that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office.

History: En. 95-3306 by Sec. 11, Ch. 333, L. 1975; amd. Sec. 62, Ch. 184, L. 1977; R.C.M. 1947, 95-3306; amd. Sec. 2, Ch. 195, L. 1989; amd. Sec. 6, Ch. 579, L. 1993; amd. Sec. 27, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 at end of (6)(a) inserted phrase relating to unreasonable risk of danger to victim; and made minor changes in style.

46-23-1022. Parole services. (1) To assist parolees the department may, in addition to other services, provide the following:

(a) employment counseling, job placement, and assistance in residential placement;

(b) family and individual counseling and treatment placement;

(c) financial counseling;

(d) vocational and educational counseling and placement; and

(e) referral services to any other state or local agencies.

(2) The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may

assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

History: En. 95-3307 by Sec. 12, Ch. 333, L. 1975; R.C.M. 1947, 95-3307.

46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return the prisoner to the actual custody of the penal institution from which he was released or to any other suitable detention facility designated by the department.

(2) Any probation and parole officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the probation and parole officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Pending hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the prisoner may, if circumstances warrant, be incarcerated in the institution.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(1).

Cross-References

Duration of parole not to exceed maximum sentence — exception for fugitive, 46-23-216.

46-23-1024. Initial hearing after arrest. (1) After the arrest of the prisoner, a hearing must be held within a reasonable time, unless the hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in the parolee's own behalf and introduce relevant information to the hearings officer.

(2) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to the hearings officer, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons and parole as provided in 46-23-1025.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd.

and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(2); amd. Sec. 234, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 near end of (2) substituted "board of pardons and parole" for "board of pardons"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Furlough violation — onsite hearing for parole revocation, 46-23-422.

46-23-1025. Report to and action by board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report must be accompanied by the findings of the hearings officer.

(2) Upon receipt of a report, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged under rules that the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release or may enter an order as it sees fit.

(3) If the prisoner has violated a condition of release requiring the payment of restitution, the board shall notify the victim of the offense prior to the hearing required by subsection (2) and give the victim an opportunity to be heard. If the board finds that due to circumstances beyond the prisoner's control, the prisoner is unable to make the required restitution payments, the board may not revoke the prisoner's parole for failure to pay restitution. The board may modify the time or method of making restitution and may extend the restitution schedule, but the schedule may not be extended beyond the period of state supervision over the prisoner.

(4) If it appears that the prisoner has violated the provisions of release, the board shall determine whether the time from the issuing of the warrant to the date of the prisoner's arrest or any part of it will be counted as time served under the sentence.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(3); amd. Sec. 28, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 inserted (3) relating to violation of condition of release requiring payment of restitution; and made minor changes in style.

46-23-1026. When prisoner considered a fugitive. A prisoner for whose return a warrant has been issued shall, after the issuance of the warrant, if it is found that the warrant cannot be served, be considered a fugitive or to have fled from justice.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(4).

Cross-References

Duration of parole not to exceed maximum sentence — exception for fugitive, 46-23-216.

46-23-1027 through 46-23-1030 reserved.

46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection (1)(b), a probationer or parolee shall pay a supervisory fee of $120 a year, prorated at $10 a month for the number of months under supervision. The fee must be collected by the clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part.

(b) The court or the board may reduce or waive the fee or suspend the monthly payment of the fee if it determines that the payment would cause the probationer or parolee a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the fees collected under the provisions of this section.

(b) District court clerks shall deduct from the total fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a).

History: En. Sec. 1, Ch. 577, L. 1993.

46-23-1032. Federal forfeiture funds — use. (1) Money forfeited under federal law and provided to the department of corrections may be deposited in an account in the federal special revenue fund.

(2) Money from federal forfeiture funds deposited in the account may be used for training probation and parole officers, for the purchase of equipment for probation and parole officers, or for other criminal justice purposes upon appropriation by the legislature.

History: En. Sec. 1, Ch. 219, L. 1995.

Compiler's Comments

Effective Date: Section 4, Ch. 219, L. 1995, provided that this section is effective July 1, 1995.

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

Part 11

Interstate Supervision of Probation and Parole

46-23-1101. Short title. This part may be cited as the "Uniform Act for Out-of-State Parolee Supervision".

History: En. Sec. 4, Ch. 189, L. 1937; Sec. 94-7902, R.C.M. 1947; redes. 95-3202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3202.

Cross-References

Extradition — violation of subdivision laws, 76-4-1246.

46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms. The governor of this state is hereby authorized and directed to enter into a compact on behalf of the state of Montana with any of the United States legally joining therein in the form substantially as follows:

A COMPACT. Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act Granting the Consent of Congress to Any Two or More States to Enter into Agreements or Compacts for Cooperative

Effort and Mutual Assistance in the Prevention of Crime and for Other Purposes."

The contracting states solemnly agree:

(1) that it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, if:

(a) such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) that each receiving state will assume the duties of visitation and of supervision over the probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees;

(3) that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formality will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) that the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference;

(5) that the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact;

(6) that this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) that this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

History: En. Sec. 1, Ch. 189, L. 1937; Sec. 94-7901, R.C.M. 1947; redes. 95-3201 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3201.

46-23-1103. Arranging for sending state to retake or reincarcerate violator. (1) Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever in their view consideration should be given to retaking or reincarceration for a parole or probation violation.

(2) Prior to the giving of any such notification, a hearing shall be held in accordance with this part within a reasonable time unless such hearing is waived by the parolee or probationer. Following termination of any such hearing, the appropriate officer or officers of this state shall, as soon as practicable, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state.

(3) Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow.

History: En. Sec. 1, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.1.

46-23-1104. Hearing officers — who eligible. Any hearing pursuant to this part may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

History: En. Sec. 2, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.2.

46-23-1105. Rights of parolee or probationer regarding hearing. With respect to any hearing pursuant to this part, the parolee or probationer:

(1) shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;

(2) shall be permitted to consult with any persons whose assistance he reasonably desires prior to the hearing;

(3) shall have the right to confront and examine any persons who have made allegations against him unless the hearing officer determines that such

confrontation would present a substantial present or subsequent danger of harm to such person or persons;

(4) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

History: **En. Sec. 3, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.3.**

46-23-1106. Hearing in another state — record, effect. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this part, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

History: **En. Sec. 4, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.4.**

CHAPTER 24

TREATMENT OF VICTIMS AND WITNESSES

Part 1 — General Provisions

46-24-101. Purpose.
46-24-102. Training in victim assistance.
46-24-103. Duty of attorney general.
46-24-104. Consultation with victim of certain offenses.
46-24-105. No cause of action for damages.

Part 2 — Services to Victim, Witness

46-24-201. Services to victims of crime.
46-24-202. Notification of available protective services.
46-24-203. Prompt notification to victims and witnesses of certain offenses.
46-24-204. Scheduling changes.
46-24-205. Notification to employer or creditor — limitations on employer.
46-24-206. Property return.
46-24-207. Victims and witnesses of juvenile felony offenses — consultation — notification of proceedings.
46-24-208 through 46-24-210 reserved.
46-24-211. Information concerning appeal or postconviction remedies.
46-24-212. Information concerning confinement.
46-24-213. General requirements for information.

Chapter Cross-References

Crimes, Title 45.

Witnesses, Title 46, ch. 15, part 1.

Crime Victims Compensation Act, Title 53, ch. 9.

Part 1
General Provisions

46-24-101. Purpose. The legislature declares that the purposes of this chapter are to:

(1) protect the role of crime victims and witnesses in the criminal justice process;

(2) assure that victims and witnesses of crime receive fair and proper treatment from law enforcement agencies and prosecutors; and

(3) provide a standard of conduct governing the treatment of victims and witnesses in criminal cases.

History: En. Sec. 1, Ch. 554, L. 1985.

Cross-References

Statutory provisions on evidence — "witness" defined, 26-1-101.

Crimes — general principles of liability — "witness" defined, 45-2-101.

46-24-102. Training in victim assistance. The Montana law enforcement academy shall offer education and training in victim assistance to law enforcement officers and prosecuting attorneys and shall provide such education and training in its regular curriculum, so that victims may be properly assisted.

History: En. Sec. 9, Ch. 554, L. 1985.

Cross-References

Law Enforcement Academy, Title 44, ch. 10.

46-24-103. Duty of attorney general. The attorney general shall ensure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. The attorney general shall prepare a written notice of the rights and services available to victims of crime under this chapter. The notice must be distributed to local law enforcement agencies in the state. In addition, the attorney general shall ensure that victims and witnesses are provided important services and assistance as required under this chapter.

History: En. Sec. 10, Ch. 554, L. 1985; amd. Sec. 29, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 inserted second and third sentences relating to written notice of rights and services available to victims; and made minor changes in style.

Cross-References

Attorney General — general duties, 2-15-501.

Crime Victims Compensation Act, Title 53, ch. 9.

46-24-104. Consultation with victim of certain offenses. As soon as possible prior to disposition of the case, the prosecuting attorney in a criminal case shall consult with the victim of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or the victim's family regarding the disposition of the case, including:

(1) dismissal of the case;

(2) release of the accused pending judicial proceedings;

(3) plea negotiations; and

(4) pretrial diversion of the case from the judicial process.

History: **En. Sec. 6, Ch. 554, L. 1985; amd. Sec. 30, Ch. 125, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 125 at beginning inserted introductory phrase concerning time of consultation and near middle, after "felony offense", inserted reference to misdemeanor offense involving bodily injury; and made minor changes in style.

Cross-References

Crimes — general principles of liability — "felony" offense defined, 45-2-101.

46-24-105. No cause of action for damages. Nothing in this chapter may be construed to create a cause of action for damages against the state or one of its political subdivisions.

History: **En. Sec. 11, Ch. 554, L. 1985.**

Cross-References

Governmental entity — liability exposure and insurance coverage, Title 2, ch. 9.

Part 2

Services to Victim, Witness

46-24-201. Services to victims of crime. (1) Law enforcement personnel shall ensure that a victim of a crime receives emergency social and medical services as soon as possible and that the victim is given written notice, in the form supplied by the attorney general, of the following:

(a) the availability of crime victim compensation;

(b) access by the victim and the defendant to information about the case;

(c) the role of the victim in the criminal justice process, including what the victim can expect from the system, as well as what the system expects from the victim; and

(d) stages in the criminal justice process of significance to a crime victim and the manner in which information about the stages may be obtained.

(2) In addition to the information supplied under subsection (1), law enforcement personnel shall provide the victim with written information on community-based victim treatment programs, including medical, housing, counseling, and emergency services available in the community.

(3) As soon as possible, law enforcement personnel shall give to the victim the following information:

(a) the name, office address, and telephone number of a law enforcement officer assigned to investigate the case; and

(b) the prosecuting attorney's name, office address, and telephone number.

History: **En. Sec. 2, Ch. 554, L. 1985; amd. Sec. 31, Ch. 125, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 125 in (1), near end, substituted "written notice, in the form supplied by the attorney general, of the following" for "information on the following"; substituted current (1)(b) relating to access to information by victim and defendant for former (2) that read: "(2) community-based victim treatment programs"; inserted (2) requiring law enforcement personnel to provide victim information on community-based victim treatment programs; inserted (3) relating to identification of investigating officer and prosecuting attorney; and made minor changes in style.

Cross-References

Child abuse, neglect, and dependency — protective care, Title 41, ch. 3, part 3.

Restitution to victims, 46-18-241 through 46-18-249.

Crime Victims Compensation Act, Title 53, ch. 9.

46-24-202. Notification of available protective services. Law enforcement officers and prosecuting attorneys shall provide a victim or witness information on the availability of services to protect the victim or witness from intimidation, including the process for obtaining a protective order from the court.

History: En. Sec. 3, Ch. 554, L. 1985; amd. Sec. 32, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 at end inserted reference to process for obtaining protective order.

Cross-References

Protection of witnesses, Title 26, ch. 2, part 4.

Detaining witnesses — criminal — material witness, 46-11-601.

46-24-203. Prompt notification to victims and witnesses of certain offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:

(a) the arrest of an accused;

(b) the release of the accused pending judicial proceedings;

(c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;

(d) proceedings in the prosecution of the accused, including entry of a plea of guilty and the setting of a trial date;

(e) if the accused is convicted or pleads guilty, the function of a presentence report; the name, office address, and telephone number of the person preparing the report; and the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;

(f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed; and

(g) the right under 46-24-212 of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration.

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a relative of such a victim or witness who is a minor, or a relative of a homicide victim.

History: En. Sec. 5, Ch. 554, L. 1985; amd. Sec. 33, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 inserted (1)(c) relating to charges filed against an accused; at end of (1)(d), after "trial date", deleted "the sentencing schedule, the sentence imposed, the term of imprisonment, if imposed, and the release of the accused from imprisonment"; inserted (1)(e) relating to presentence report; inserted (1)(f) relating to sentencing hearing; inserted (1)(g) relating to information concerning incarceration; in (2), after "felony offense", inserted reference to misdemeanor offense involving bodily injury; and made minor changes in style.

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

Cross-References

Crimes — general principles of liability — "felony" offense defined, 45-2-101.

46-24-204. Scheduling changes. (1) As soon as practicable, the prosecuting attorney shall notify a victim or witness of any scheduling changes that may affect the appearance of the victim or witness at a criminal justice proceeding that he is scheduled to attend.

(2) For the purpose of providing notification, the prosecuting attorney shall have available a system for promptly alerting a victim or witness that a scheduling change has been made.

History: En. Sec. 4, Ch. 554, L. 1985.

46-24-205. Notification to employer or creditor — limitations on employer. (1) The law enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from the place of employment.

(2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is subjected to serious financial strain. The agency or prosecuting attorney shall assist the victim or witness by explaining to creditors the reason for the serious financial strain.

(3) An employer may not discharge or discipline a victim or a member of the victim's family for participation at the prosecuting attorney's request in preparation for or attendance at a criminal justice proceeding.

(4) As used in this section, "member of the victim's family" means the victim's spouse, child by birth or adoption, stepchild, parent, stepparent, or sibling, but does not include a person who is accountable for the crime or accountable for a crime arising from the same transaction.

History: En. Sec. 8, Ch. 554, L. 1985; amd. Sec. 34, Ch. 125, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 125 inserted (3) prohibiting employer from discharging or disciplining victim or family for participation in criminal justice proceeding; inserted (4) defining member of the victim's family; and made minor changes in style.

46-24-206. Property return. A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining such property.

History: En. Sec. 7, Ch. 554, L. 1985.

Cross-References

Disposition of property of deceased, 7-4-2917.

Custody and disposition of items seized by peace officer without search warrant, 46-5-311.

46-24-207. Victims and witnesses of juvenile felony offenses — consultation — notification of proceedings. (1) The attorney general shall ensure that the services and assistance that must be provided under this chapter to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under Title 41, chapter 5, part 5, the county attorney or a designee shall consult with the victim of a juvenile felony offense or, in the case of a minor victim or a homicide victim, with the victim's family regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-501;

(b) a reduction of the charge to misdemeanor;

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and

(d) the disposition of the youth.

(3) (a) Whenever possible, a person described in subsection (3)(b) who provides the youth court with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-501;

(ii) the release of the youth from detention or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim of a juvenile felony offense, an adult relative of the victim if the victim is a minor, or an adult relative of a homicide victim.

(c) The court shall provide to the department the list of people entitled to notification under this subsection (3), and the department is responsible to provide the notification.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103.

History: En. Sec. 1, Ch. 170, L. 1991; amd. Sec. 6, Ch. 466, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 466 in (1), at beginning, inserted "attorney general shall ensure that the"; substituted (2) concerning consultation on disposition of case for "The attorney general shall assure that a victim or witness of a juvenile felony offense is provided the same services and assistance required under this chapter for the victim or witness of a crime"; inserted (3) regarding advance notification of Youth Court proceedings; and made minor changes in style. Amendment effective April 14, 1995.

46-24-208 through 46-24-210 reserved.

46-24-211. Information concerning appeal or postconviction remedies. If the defendant appeals or pursues a postconviction remedy, the attorney general, or the county attorney if the case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal or postconviction petition, of the date, time, and place of any hearing, and of the decision.

History: En. Sec. 35, Ch. 125, L. 1995.

46-24-212. Information concerning confinement. Upon request of a victim of a felony offense, the department of corrections or the board of pardons, as applicable, shall:

(1) promptly inform the victim of the estimated date of the prisoner's release from confinement in the Montana state prison, if reasonably ascertainable;

(2) promptly inform the victim of the time and place of a parole hearing concerning the prisoner and of the victim's right to submit a statement to the board of pardons under 46-23-202;

(3) provide reasonable advance notice to the victim before release of the defendant on furlough or to a work-release program, half-way house, or other community-based program or correctional facility; and

(4) promptly inform the victim of the occurrence of any of the following events concerning the prisoner:

(a) an escape from a correctional or mental health facility or community program;

(b) a recapture;

(c) a decision of the board of pardons;

(d) a decision of the governor to commute the sentence or to grant executive clemency;

(e) a release from confinement and any conditions attached to the release; and

(f) the prisoner's death.

History: En. Sec. 36, Ch. 125, L. 1995.

Compiler's Comments

Code Commissioner Change: Pursuant to sec. 5, Ch. 546, L. 1995, the Code Commissioner substituted Department of Corrections for Department of Corrections and Human Services.

46-24-213. General requirements for information. (1) Unless specifically stated otherwise, the requirements of 44-2-601, 46-24-104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 to provide information to the victim may be satisfied by either written or oral communication with the victim or the victim's designee.

(2) The person responsible for providing information required by 44-2-601, 46-24-104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 shall promptly inform the victim of significant changes in the information.

(3) The obligation to furnish information to a victim under 44-2-601, 46-24-104, 46-24-201 through 46-24-203, 46-24-211, and 46-24-212 is conditioned upon the victim informing the appropriate agency in writing of the name, address, and telephone number of the person to whom the information should be provided and of any change of name, address, or telephone number.

History: En. Sec. 37, Ch. 125, L. 1995.

CHAPTERS 25 THROUGH 29

RESERVED

CHAPTER 30

UNIFORM CRIMINAL EXTRADITION ACT

Part 1 — General Provisions

46-30-101. Definitions.
46-30-102. Nonwaiver by this state.

Part 2 — Extradition to Another State From This State

46-30-201. Fugitives from justice — duty of governor.
46-30-202. Prosecution pending in this state at time of requisition.

46-30-203. Extradition of persons who left demanding state involuntarily.
46-30-204. Extradition of persons not present in demanding state when crime committed.
46-30-205 through 46-30-210 reserved.
46-30-211. Demand — form.
46-30-212. Investigation by governor.
46-30-213. Issuance of arrest warrant by governor.
46-30-214. Recall of warrant or alias warrant.
46-30-215. Execution of warrant.
46-30-216. Authority of arresting officer.
46-30-217. Rights of accused persons — habeas corpus.
46-30-218. Penalty for violating accused's rights.
46-30-219 through 46-30-224 reserved.
46-30-225. Guilt or innocence of accused, when inquired into.
46-30-226. Confinement of accused in jail on route.
46-30-227. Arrest of accused before making of requisition.
46-30-228. Written waiver of extradition proceedings.
46-30-229. Prior waiver of extradition.

Part 3 — Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant.
46-30-302. Commitment to await requisition.
46-30-303. Bail while awaiting requisition.
46-30-304. Extension of time of commitment or bail.
46-30-305. Forfeiture of bail.

Part 4 — Extradition to This State From Another State

46-30-401. Application for issuance of requisition.
46-30-402. Requisition by governor.
46-30-403. Extradition of persons held in another state.
46-30-404. Immunity from service of civil process.
46-30-405. No immunity from other criminal prosecutions.
46-30-406 through 46-30-410 reserved.
46-30-411. Expenses of bringing fugitives back to this state.
46-30-412. Restrictions on compensation for assisting return of fugitive.
46-30-413. Penalty for illegal compensation.

Part 1

General Provisions

46-30-101. Definitions. Where appearing in this chapter, the term:

(1) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state or the chairman of a recognized Indian tribe within the state of Montana;

(2) "governor" includes any person performing the functions of governor by authority of the law of this state;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America or an Indian reservation within the state of Montana.

History: En. 95-3101 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3101; amd. Sec. 1, Ch. 379, L. 1991.

46-30-102. Nonwaiver by this state. Nothing contained in this chapter may be considered a waiver by this state of its right, power, or privilege to try the demanded person for a crime committed within this state or of its right, power, or privilege to regain custody of the person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state; nor may any proceedings had under this chapter which result in or fail to result in extradition be considered in any way a waiver by this state of any of its rights, privileges, or jurisdiction.

History: En. 95-3129 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 58, Ch. 184, L. 1977; R.C.M. 1947, 95-3129.

Part 2

Extradition to Another State From This State

46-30-201. Fugitives from justice — duty of governor. Subject to the provisions of this chapter, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime who has fled from justice and is found in this state.

History: En. 95-3102 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3102.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

46-30-202. Prosecution pending in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: En. 95-3119 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3119.

46-30-203. Extradition of persons who left demanding state involuntarily. The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in 46-30-401 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-204. Extradition of persons not present in demanding state when crime committed. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in 46-30-211 with committing an act in this state or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

History: En. 95-3106 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3106.

Cross-References

This section as exception to commitment to await requisition, 46-30-302.

46-30-205 through 46-30-210 reserved.

46-30-211. Demand — form. (1) No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, except in cases arising under 46-30-204, and accompanied by:

(a) a copy of an indictment found or information supported by affidavit in the state having jurisdiction of the crime;

(b) a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or

(c) a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole.

(2) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. The copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

History: En. 95-3103 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3103.

46-30-212. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

History: En. 95-3104 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3104.

46-30-213. Issuance of arrest warrant by governor. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History: En. 95-3107 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3107.

46-30-214. Recall of warrant or alias warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: En. 95-3121 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3121.

46-30-215. Execution of warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state, to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

History: En. 95-3108 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3108.

46-30-216. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest shall have the same authority to command assistance in arresting the accused as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: **En. 95-3109 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3109.**

Cross-References

Assisting a peace officer in making an arrest, 45-7-304, 46-6-402.

46-30-217. Rights of accused persons — habeas corpus. (1) No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken without delay before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel.

(2) If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest was made and in which the accused is in custody and to the agent of the demanding state.

History: **En. 95-3110 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 52, Ch. 184, L. 1977; R.C.M. 1947, 95-3110.**

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-210.

Habeas corpus, Title 46, ch. 22.

Right to counsel — probation hearing, 46-23-204.

46-30-218. Penalty for violating accused's rights. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in willful disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned not more than 6 months, or both.

History: **En. 95-3111 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3111.**

46-30-219 through 46-30-224 reserved.

46-30-225. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided for in 46-30-211 has been presented to the governor except as it may be involved in identifying the person held as the person charged with the crime.

History: **En. 95-3120 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 55, Ch. 184, L. 1977; R.C.M. 1947, 95-3120.**

46-30-226. Confinement of accused in jail on route. (1) The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: En. 95-3112 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3112.

46-30-227. Arrest of accused before making of requisition. (1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein wherever the person may be found in this state and to bring the person before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:

(a) a person within this state is charged on the oath of a credible person before the judge or magistrate with the commission of a crime in another state and, except in cases arising under 46-30-204, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation, or parole; or

(b) a complaint is made before the judge or magistrate setting forth on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused is believed to be in this state and has been charged in the other state with:

(i) the commission of the crime and, except in cases arising under 46-30-204, having fled from justice; or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History: En. 95-3113 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 53, Ch. 184, L. 1977; R.C.M. 1947, 95-3113.

Cross-References

Arrest of accused without warrant, 46-30-301.

46-30-228. Written waiver of extradition proceedings. (1) Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in 46-30-213 and 46-30-215 and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state. Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in 46-30-217.

(2) If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to such agent or agents a copy of such consent.

(3) Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History: En. 95-3128 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3128.

46-30-229. Prior waiver of extradition. (1) A person who is alleged to have violated the terms of his bail, probation, parole, or any other conditional release from another state and who is held in this state may be released to the duly authorized agent of that other state without the warrant provided for in 46-30-213 if the following has occurred:

(a) a district court in this state has held a hearing at which the state has presented:

(i) a certified copy of an agreement to waive extradition, signed by the person, or an order from the other state releasing the person on the condition that he waive extradition;

(ii) a certified copy of the warrant or order from the other state directing the return of the person for violating the terms of his release; and

(iii) evidence that the person is the same person named in the warrant or order; and

(b) the district court has found that there is probable cause to believe that the person is the same person charged in the warrant or order. Whenever a district court makes this finding, it shall, except as provided in subsection (2), order that the person be remanded to custody and delivered to agents of the other state. The court shall also advise the person of his right to contest the order by filing a writ of habeas corpus.

(2) If the person wishes to test the validity of the order issued pursuant to subsection (1)(b), the court shall fix a reasonable time for him to apply for a writ of habeas corpus before he may be released to agents from the other state.

History: En. Sec. 1, Ch. 392, L. 1987.

Part 3

Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term of 1 year or more. When arrested under this section, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. After the complaint is made, his answer must be heard as if he had been arrested on a warrant.

History: En. 95-3114 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3114; amd. Sec. 17, Ch. 79, L. 1983; amd. Sec. 2, Ch. 379, L. 1991.

Cross-References

Manner of arrest without warrant, 46-6-312.

46-30-302. Commitment to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under 46-30-204, that he has fled from justice, the judge or magistrate must by a warrant reciting the accusation commit him to the county jail for such a time not exceeding 30 days and specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in 46-30-303 or until he shall be legally discharged.

History: En. 95-3115 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3115.

46-30-303. Bail while awaiting requisition. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking and for his surrender to be arrested upon the warrant of the governor of this state.

History: En. 95-3116 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3116.

Cross-References

Bail, Title 46, ch. 9.

46-30-304. Extension of time of commitment or bail. If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of 60 days or a supreme court justice or district court judge may again take bail for his appearance and surrender, as provided in 46-30-303, for a period not to exceed 60 days after the date of the new bond or undertaking.

History: En. 95-3117 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 54, Ch. 184, L. 1977; R.C.M. 1947, 95-3117.

46-30-305. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

History: En. 95-3118 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3118.

Cross-References
Recovery by state on forfeited bond, 46-9-503, 46-9-512.

Part 4

Extradition to This State From Another State

46-30-401. Application for issuance of requisition. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged. The application shall state the name of the person charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made. It shall certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of the person. The application shall state the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including the location of the person therein at the time the application is made.

(3) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he considers proper to be submitted with the application.

(5) One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: En. 95-3123 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 56, Ch. 184, L. 1977; R.C.M. 1947, 95-3123; amd. Sec. 172, Ch. 575, L. 1981.

Cross-References

Extradition of persons who left demanding state involuntarily, 46-30-203.

46-30-402. Requisition by governor. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the chief executive of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: En. 95-3122 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3122.

46-30-403. Extradition of persons held in another state. When it is desired to have returned to this state a person charged in this state with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-404. Immunity from service of civil process. A person brought into this state on or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned until he has been convicted in the criminal proceedings or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: En. 95-3127 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3127.

46-30-405. No immunity from other criminal prosecutions. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: En. 95-3130 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3130.

46-30-406 through 46-30-410 reserved.

46-30-411. Expenses of bringing fugitives back to this state. (1) When the governor of this state, in the exercise of the authority conferred by section 2, Article IV, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the attorney general and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to

return the fugitive. The agent shall be paid travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in returning the fugitive to this state.

History: (1)En. 95-3124 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 18, Ch. 343, L. 1977; Sec. 95-3124, R.C.M. 1947; (2)En. Sec. 1, Ch. 331, L. 1975; amd. Sec. 31, Ch. 453, L. 1977; Sec. 95-3124.1, R.C.M. 1947; R.C.M. 1947, 95-3124, 95-3124.1; amd. Sec. 3, Ch. 446, L. 1979.

Cross-References

Mileage allowed when private vehicle used, 2-18-503.

46-30-412. Restrictions on compensation for assisting return of fugitive. No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 46-30-411(1), for the surrender of the fugitive, or for conveying him to this state or detaining him therein, except as provided in 46-30-411.

History: En. 95-3125 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 57, Ch. 184, L. 1977; R.C.M. 1947, 95-3125.

46-30-413. Penalty for illegal compensation. Every person who violates any of the provisions of 46-30-412 is guilty of a misdemeanor.

History: En. 95-3126 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3126.

Cross-References

When no penalty is specified, 46-18-212.

CHAPTER 31

INTERSTATE AGREEMENT ON DETAINERS

Part 1 — Contents of Agreement

46-31-101. Agreement on detainers — enactment and text.
46-31-102. Jurisdiction of district courts.

Part 2 — Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement.
46-31-202. Warden to give over inmate.
46-31-203. Coordinator of agreement.
46-31-204. Penalty for escape from custody on detainer.

Chapter Cross-References

Extradition of persons held in another state, 46-30-403.

Part 1

Contents of Agreement

46-31-101. Agreement on detainers — enactment and text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall

promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the

governor of the sending state may disapprove the request for temporary custody or availability either upon his own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment,

information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this chapter, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 215, L. 1963; Sec. 94-1101-1, R.C.M. 1947; redes. 95-3131 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3131; amd. Sec. 1, Ch. 346, L. 1985.

46-31-102. Jurisdiction of district courts. The phrase "appropriate court", as used in the agreement on detainers, shall with reference to the courts of this state mean district courts.

History: En. Sec. 2, Ch. 215, L. 1963; Sec. 94-1101-2, R.C.M. 1947; redes. 95-3132 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3132.

Part 2

Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement. All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: En. Sec. 3, Ch. 215, L. 1963; Sec. 94-1101-3, R.C.M. 1947; redes. 95-3133 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3133.

46-31-202. Warden to give over inmate. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: **En. Sec. 5, Ch. 215, L. 1963; Sec. 94-1101-5, R.C.M. 1947; redes. 95-3135 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3135.**

46-31-203. Coordinator of agreement. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules to carry out more effectively the terms and provisions of this chapter and who shall provide within and without the state information necessary to the effective operation of this agreement.

History: **En. Sec. 6, Ch. 215, L. 1963; Sec. 94-1101-6, R.C.M. 1947; redes. 95-3136 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3136.**

46-31-204. Penalty for escape from custody on detainer. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information, or complaint and who escapes therefrom is punishable by a fine in an amount not to exceed $50,000, or by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, or by both, said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: **En. Sec. 4, Ch. 215, L. 1963; Sec. 94-1101-4, R.C.M. 1947; redes. 95-3134 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3134; amd. Sec. 7, Ch. 198, L. 1981.**

TITLES 47 AND 48

RESERVED

TITLE 49

HUMAN RIGHTS

Ch.
1. Basic Rights.
2. Illegal Discrimination.
3. Governmental Code of Fair Practices.
4. Rights of the Handicapped.

CHAPTER 1

BASIC RIGHTS

Part 1 — Basic Personal Rights

49-1-101. Right of protection from personal injury.
49-1-102. Freedom from discrimination.
49-1-103. Right to use force.

Part 2 — Basic Political Rights

49-1-201. Right to state's protection.
49-1-202. Right to hold elected office.
49-1-203. Rights and duties of electors as compared to nonelectors.
49-1-204. Rights and duties of citizens of other states.

Chapter Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Equal protection — prohibition on discrimination, Art. II, sec. 4, Mont. Const.; Amend. 14, U.S. Const.

Freedom of religion, Art. II, sec. 5, Mont. Const.; 39-31-204.

Freedom of assembly, Art. II, sec. 6, Mont. Const.

Freedom of speech, expression, and press, Art. II, sec. 7, Mont. Const.

Right to bear arms, Art. II, sec. 12, Mont. Const.

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Access to courts, Art. II, sec. 16, Mont. Const.

Due process of law, Art. II, sec. 17, Mont. Const.; Amend. 14, U.S. Const.

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Unenumerated rights, Art. II, sec. 34, Mont. Const.; Amend. 9, U.S. Const.

Freedom of religion, speech, press, assembly, and petition, Amend. 1, U.S. Const.

Double jeopardy, self-incrimination, and due process of law, Amend. 5, U.S. Const.

State Coordinator of Indian Affairs, 2-15-217, 90-11-101, 90-11-102.

Rights and obligations of minors, Title 41, ch. 1.

"Baby Jane Doe law" — right of infants to medical treatment, 41-3-102 (see definitions of "adequate health care" and "withholding of medically indicated treatment").

Effect of former status as mental patient, 53-21-189.

Part 1

Basic Personal Rights

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Search and seizure, Art. II, sec. 11, Mont. Const.; Amend. 4, U.S. Const.; Title 46, ch. 5.

Quartering soldiers, Art. II, sec. 32, Mont. Const.; Amend. 3, U.S. Const.

Husband and wife, Title 40, ch. 2.

Right to die with dignity, Title 50, ch. 9.

Rights of nonsmokers, Title 50, ch. 40.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations.

History: En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R.C.M. 1921; Cal. Civ. C. Sec. 43; Field Civ. C. Sec. 27; re-en. Sec. 5688, R.C.M. 1935; R.C.M. 1947, 64-201; amd. Sec. 1, Ch. 177, L. 1979.

Cross-References

Habeas corpus, Art. II, sec. 19, Mont. Const.

Bail, Art. II, sec. 21, Mont. Const.; Amend. 8, U.S. Const.

Excessive sanctions, Art. II, sec. 22, Mont. Const.; Amend. 8, U.S. Const.

Detention to secure testimony, Art. II, sec. 23, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.; Amend. 6, U.S. Const.

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Habeas corpus, bill of attainder and ex post facto, Art. I, sec. 9, U.S. Const.

Slavery, Amend. 13, U.S. Const.

Limit on rights, 1-3-205.

Consent, 1-3-206.

Remedy, 1-3-214.

Voter information pamphlet — rejection of defamatory matter, 13-27-408.

Code of Fair Campaign Practices, Title 13, ch. 35, part 3.

Availability of remedies — liability, Title 27, ch. 1.

Abolition of certain causes of action, Title 27, ch. 1, part 6.

Libel and slander, Title 27, ch. 1, part 8.

Actions against consumer reporting agencies, 31-3-141.

Defaming insurer prohibited, 33-18-302.

Defaming competitors — hearing aid dispensers, 37-16-411.

Marital status irrelevant to parent-child relationship, 40-6-103.

Use of force in defense of person, 45-3-102.

Mistreatment of prisoners, 45-5-204.

False imprisonment, 45-5-301.

Criminal defamation, 45-8-212.

Bail, Title 46, ch. 9.

Mental competency of criminal defendants, Title 46, ch. 14.

Criminal defamation — jury to decide law, 46-16-103.

Habeas corpus, Title 46, ch. 22.

Commitment of the developmentally disabled, Title 53, ch. 20, part 1.

Commitment of the seriously mentally ill, Title 53, ch. 21, part 1.

49-1-102. Freedom from discrimination. (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental disability, age, or national origin is recognized as and declared to be a civil right. This right must include but not be limited to:

(a) the right to obtain and hold employment without discrimination; and

(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

History: En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977; R.C.M. 1947, 64-301; amd. Sec. 2, Ch. 682, L. 1991; amd. Sec. 1, Ch. 407, L. 1993.

Cross-References

Classified service employees — municipal commission-manager government, 7-3-4415.

Employment by county Board of Park Commissioners, 7-16-2326.

Work-study program, 20-25-707.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Exemption from association with labor organization on religious grounds, 39-31-204.

Adoption policy — best interest of child standard — factors to be considered, 40-8-114.

Health care facilities, 50-5-105.

Furnishing of medical assistance, 53-6-105.

49-1-103. Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, of a wife, husband, child, parent, or other relative or member of one's family, or of a ward, servant, master, or guest.

History: En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R.C.M. 1921; Cal. Civ. C. Sec. 50; Based on Field Civil C. Sec. 33; re-en. Sec. 5694, R.C.M. 1935; R.C.M. 1947, 64-210.

Cross-References

Justifiable use of force, Title 45, ch. 3.

Part 2

Basic Political Rights

Part Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Self-government, Art. II, sec. 2, Mont. Const.

Right of participation in government, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Right of suffrage, Art. II, sec. 13, Mont. Const.

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Initiative and referendum, Art. III, sec. 4 through 6, Mont. Const.

Suffrage and elections, Art. IV, Mont. Const.

Initiative and referendum — local government, Art. XI, sec. 8, Mont. Const.

Right to vote — race, sex, poll tax, age 18, Amend. 15, 19, 24, 26, U.S. Const.

Citizenship, Title 1, ch. 1, part 4.

Public participation in governmental operations, Title 2, ch. 3.

Access to public records, 2-6-102, 2-6-104, 2-6-207, 2-6-307.

United States citizenship — naturalization records, 3-5-514.

United States citizenship — naturalization fees, 3-5-515.

Access to public records — docket of lobbyists, 5-7-202.

Public participation in municipal government, 7-1-4131, 7-1-4141 through 7-1-4143, 7-3-1218, 7-3-4323.

Access to municipal public records, 7-1-4144.

Duty of citizens to aid in law enforcement, 7-4-4303, 7-4-4304, 45-7-304.

Citizen participation — proposals of Interlocal Cooperation Commission, 7-11-225.

Participation in home guard, 10-1-701.

Elections, Title 13.

Qualifications of voters, 13-1-111, 13-2-206.

Rights of convicted persons, 46-18-801.

49-1-201. Right to state's protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R.C.M. 1921; Cal. Pol. C. Sec. 54; re-en. Sec. 34, R.C.M. 1935; R.C.M. 1947, 83-401.

Cross-References

Powers of municipalities with general powers, 7-1-4123, 7-1-4124.

Child abuse, neglect, and dependency, Title 41, ch. 3.

Spouse abuse, Title 52, ch. 6, part 1.

49-1-202. Right to hold elected office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R.C.M. 1921; Cal. Pol. C. Sec. 58; re-en. Sec. 38, R.C.M. 1935; R.C.M. 1947, 83-405.

Cross-References

Qualifications of Legislators, Art. V, sec. 4, Mont. Const.

Qualifications of executive officers, Art. VI, sec. 3, Mont. Const.

Qualifications of judicial officers, Art. VII, sec. 9, Mont. Const.

Qualifications of U.S. Representatives, Art. I, sec. 2, U.S. Const.

Qualifications of U.S. Senators, Art. I, sec. 3, U.S. Const.

Qualifications of U.S. President, Art. II, sec. 1, U.S. Const.

No religious test to hold public office, Art. VI, U.S. Const.

Eligibility to hold civil office, 2-16-102.

Qualifications of voters, 13-1-111, 13-2-206.

49-1-203. Rights and duties of electors as compared to nonelectors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R.C.M. 1921; Cal. Pol. C. Sec. 59; re-en. Sec. 39, R.C.M. 1935; R.C.M. 1947, 83-406.

49-1-204. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R.C.M. 1921; Cal. Pol. C. Sec. 60; re-en. Sec. 40, R.C.M. 1935; R.C.M. 1947, 83-407.

Cross-References

Privileges and immunities, Art. IV, sec. 2, U.S. Const.

Determination of residence, 1-1-215.

Qualifications of notary public, 1-5-402.

Qualifications for membership on licensing boards, 2-15-1841, 2-15-1842, 2-15-1844, 2-15-1851, 2-15-1873, 2-15-1881.

Qualifications for membership on agricultural research and marketing committees, 2-15-3002.

Membership on Judicial Standards Commission, 3-1-1101.

Right to initiate investigation of judicial officer, 3-1-1106.

Qualifications of Supreme Court Justice, 3-2-102.

Qualifications of District Court Judge, 3-5-202.

Qualifications of Justice of the Peace, 3-10-204.

Composition of juries, 3-15-101 through 3-15-105.

Membership on Districting and Apportionment Commission, 5-1-101.

Qualifications for county office, 7-4-2201.

Qualifications for district or township office, 7-4-2202.

Qualifications for County Attorney in large counties, 7-4-2701.

Qualifications for municipal office, 7-4-4104.

Permits for commercial timber harvest, 7-8-2609.

Qualifications of reserve police officers, 7-32-213.

Deferral of property taxes of Montana citizen serving in military, 10-1-606.

Participation in home guard, 10-1-701.

Eligibility for liquor license, 16-4-401.

Public contracts — preference to Montana bidders, 18-1-102.

Public contracts — preference to Montana labor, 18-2-403.

Participation in registration of heritage properties, 22-3-431.

Eligibility to be an auctioneer, 30-11-508, 30-11-509.

Banks — composition of board of directors, 32-1-322.

Building and loan associations — incorporators, 32-2-201.

Stock and mutual insurers — incorporators, 33-3-201.

Qualifications for trustees of cemetery care funds, 35-20-302.

Qualifications of investigator, pharmacy regulation, 37-7-104.

Qualifications for outfitter's or professional guide's license, 37-47-302, 37-47-303.

Qualifications to be licensed as private investigator or patrol operator, 37-60-304.

Qualifications of attorneys, 37-61-202, 37-61-208.

Qualifications of highway patrol officers, 44-1-401.

Eligibility to be a state coal mine inspector, 50-73-401.

Interstate Compact on Mental Health, 53-22-101.

Eligibility of railroad personnel to act as law officers, 69-14-1003.

Issuance of commercial permits for timber removal, 77-5-212.

Access to services of grain and seed laboratory, 80-5-110.

Policy toward nonresident big game hunters, 87-3-303.

CHAPTER 2

ILLEGAL DISCRIMINATION

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49-2-601. Criminal penalty.

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Part 1
General Provisions

49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of the person's business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means an individual employed by an employer.

(8) "Employer" means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "National origin" means ancestry.

(14) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(15) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(16) (a) "Public accommodation" means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

(17) "Staff" or "commission staff" means the staff of the commission for human rights.

History: En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977; R.C.M. 1947, 64-305; amd. Sec. 2, Ch. 177, L. 1979; amd. Sec. 1, Ch. 543, L. 1989; amd. Sec. 1, Ch. 241, L. 1991; amd. Sec. 1, Ch. 235, L. 1993; amd. Sec. 2, Ch. 407, L. 1993.

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Access to public records, 2-6-102, 2-6-104, 2-6-207, 2-6-307.

Part 2
Commission for Human Rights

Part Cross-References

Membership, allocation, 2-15-1706.

49-2-201. Commission staff. (1) The staff may include an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, assist in the preparation and presentation of complaints to the commission, and represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

(2) In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.

History: (1)En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975; Sec. 64-311, R.C.M. 1947;(2)En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; Sec. 64-308, R.C.M. 1947; R.C.M. 1947, 64-308(part), 64-311.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313.

49-2-204. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this chapter. Rulemaking procedures shall comply with the requirements of the Montana Administrative Procedure Act.

History: En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Prohibited Discriminatory Practices

Part Cross-References

Price discrimination, Title 30, ch. 14, part 9.

Unfair discrimination prohibited — life insurance, annuities, and disability insurance, 33-18-206.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: Ap.p. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; Ap.p. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. Sec. 5, Ch. 177, L. 1979.

Cross-References

When accountability exists, 45-2-302.

Inchoate offenses, Title 45, ch. 4.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental disability, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application that expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications must be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2); amd. Sec. 1, Ch. 279, L. 1983; amd. Sec. 1, Ch. 342, L. 1985; amd. Sec. 3, Ch. 506, L. 1991; amd. Sec. 3, Ch. 13, L. 1993; amd. Sec. 3, Ch. 407, L. 1993.

Cross-References

Work-study program, 20-25-707.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

49-2-304. Discrimination in public accommodations. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental disability, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, age, physical or mental disability, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color,

religion, creed, sex, marital status, age, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3); amd. Sec. 1, Ch. 3, L. 1989; amd. Sec. 2, Ch. 543, L. 1989; amd. Sec. 1, Ch. 454, L. 1991; amd. Sec. 4, Ch. 407, L. 1993.

Cross-References

Health care facilities, 50-5-105.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Opportunity for religious observance in mental health facilities, 53-21-142.

49-2-305. Discrimination in housing — exemptions. (1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(a) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C.

3607(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner's residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981; amd. Sec. 1, Ch. 503, L. 1989; amd. Sec. 1, Ch. 328, L. 1991; amd. Sec. 2, Ch. 454, L. 1991; amd. Sec. 1, Ch. 801, L. 1991; amd. Sec. 5, Ch. 407, L. 1993.

Cross-References

Urban renewal, 7-15-4207.

49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of that person's duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical disability, sex, or marital status against any person in any credit transaction that is subject to the jurisdiction of any state or federal court of record.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8); amd. Sec. 6, Ch. 407, L. 1993.

Cross-References

State District Court jurisdiction, Title 3, ch. 5, part 3.

Municipal Court jurisdiction, 3-6-103.

Power to contract, Title 28, ch. 2, part 2.

No discrimination by certain insurers, 33-18-210.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a

record concerning the race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental disability, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(7); amd. Sec. 7, Ch. 407, L. 1993.

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Exemption from immunization requirements on religious grounds, 20-5-405.

49-2-308. Discrimination by the state. (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental disability, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental disability is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of that person's political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1).

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(6); amd. Sec. 3, Ch. 682, L. 1991; amd. Sec. 8, Ch. 407, L. 1993.

Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Executive branch officers and agencies, Title 2, ch. 15.

Classified service employees — municipal commission-manager government, 7-3-4415.

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Employment by county Board of Park Commissioners, 7-16-2326.

Use of hospital district facilities, 7-34-2123.

Veterans' benefits, Title 10, ch. 2, part 3.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Exemption from school immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

Surrogate parent to represent interests of handicapped student, 20-7-461 through 20-7-463.

Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.

Work-study program, 20-25-707.

Library services for the handicapped, 22-1-103.

Religious beliefs of witness not relevant to credibility, Rule 610, M.R.Ev. (see Title 26, ch. 10).

Marital status irrelevant to parent-child relationship, 40-6-103.

Adoption policy — best interest of child standard — factors to be considered, 40-8-114.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Exemption from prenatal blood tests on religious grounds, 50-19-109.

Right to refuse to participate in abortion, 50-20-111.

Furnishing of medical assistance, 53-6-105.

Community programs and homes for the physically disabled, Title 53, ch. 19, part 1.

Community-based services for developmentally disabled, 53-20-212.

Community mental health centers, 53-21-206.

Ineligibility of handicapped for driver's license, 61-5-105.

Homestead exemption, Title 70, ch. 32, part 2.

Surviving spouse exempt from inheritance tax, 72-16-313.

Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

49-2-309. Discrimination in insurance and retirement plans. (1) It is an unlawful discriminatory practice for a financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(2) This section does not apply to any insurance policy, plan, or coverage or to any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

(3) It is not a violation of the prohibition against marital status discrimination in this section for an employer to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.

History: En. Secs. 1, 3, Ch. 531, L. 1983; amd. Sec. 4, Ch. 13, L. 1993.

Cross-References

Insurance forms — discriminatory provisions as grounds for disapproval, 33-1-502.

49-2-310. Maternity leave — unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1); amd. Sec. 1, Ch. 285, L. 1983; MCA 1981, 39-7-203; redes. 49-2-310 by Sec. 2, Ch. 285, L. 1983.

49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2); MCA 1981, 39-7-204; redes. 49-2-311 by Sec. 2, Ch. 285, L. 1983.

Part 4

Exceptions to Prohibitions

49-2-401. Repealed. Sec. 11, Ch. 801, L. 1991.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

49-2-402. "Reasonable" to be strictly construed. Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(10).

49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) through (5) and 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(1), (2); amd. Sec. 2, Ch. 342, L. 1985; amd. Sec. 4, Ch. 506, L. 1991; amd. Sec. 5, Ch. 13, L. 1993; amd. Sec. 9, Ch. 407, L. 1993.

Cross-References

Power to contract, Title 28, ch. 2, part 2.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-404. Distinctions permitted for modesty or privacy. Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: **En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(3).**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

49-2-405. Veterans' and handicapped persons' employment preference. The application of an employment preference as provided for in Title 39, chapter 29 or 30, and 10-2-402 by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

History: **En. Sec. 12, Ch. 1, Sp. L. 1983; amd. Sec. 15, Ch. 646, L. 1989.**

Part 5

Enforcement by Commission

49-2-501. Filing complaints. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein may not be considered by the commission.

History: **En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(1); amd. Sec. 8, Ch. 177, L. 1979; amd. Sec. 1, Ch. 415, L. 1987; amd. Sec. 3, Ch. 801, L. 1991.**

49-2-502. Notification of and action by commission. The staff shall notify the commission in writing of all complaints filed with the commission. The commission shall meet a minimum of four times a year to hear and act upon all complaints filed.

History: **En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(part).**

49-2-503. Temporary relief by court order. At any time after a complaint is filed under this chapter, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(3); amd. Sec. 4, Ch. 801, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

49-2-504. Informal settlement. The commission staff shall informally investigate the matters set out in a filed complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4).

49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing must be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, institution, entity, or agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act except as provided in 49-2-508.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorneys' fees. The court in its discretion may allow the prevailing party reasonable attorneys' fees. An action under this section must comply with the Montana Rules of Civil Procedure.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(5), (6); amd. Sec. 9, Ch. 177, L. 1979; amd. Sec. 1, Ch. 709, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Montana Rules of Civil Procedure, Title 25, ch. 20.

49-2-506. Procedure upon a finding of discrimination. (1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) Except as provided in 49-2-510, the order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(1), (2), (4); amd. Sec. 10, Ch. 177, L. 1979; amd. Sec. 5, Ch. 801, L. 1991.

49-2-507. Procedure upon failure to find discrimination. If the commission finds that a person, institution, entity, or agency against whom or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

49-2-508. Enforcement of commission order. If the commission's order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310; amd. Sec. 1, Ch. 539, L. 1985.

Cross-References

Venue in civil actions, Title 25, ch. 2.

Injunctions, Title 27, ch. 19.

49-2-509. Filing a complaint in district court. (1) Except as provided in subsection (2) or with respect to complaints alleging a violation of 49-2-305, the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim shall be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter.

History: En. Sec. 1, Ch. 505, L. 1983; amd. Sec. 1, Ch. 511, L. 1987; amd. Sec. 6, Ch. 801, L. 1991.

49-2-510. Procedures and remedies for enforcement of housing discrimination laws. (1) A complaint may be filed with the commission by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within 1 year after the alleged unlawful discriminatory practice occurred or was discovered.

(2) (a) Except as provided in subsection (2)(b), if the commission, in a hearing under 49-2-505, finds that a person, institution, entity, or agency against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(i) in an amount not exceeding $10,000 if the respondent has not been found to have committed any prior discriminatory housing practice in violation of 49-2-305;

(ii) in an amount not exceeding $25,000 if the respondent has been found to have committed one other discriminatory housing practice in violation of

49-2-305 during the 5-year period ending on the date of the filing of the complaint; and

(iii) in an amount not exceeding $50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.

(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.

(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is in substance affirmed:

(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency; and

(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

(4) (a) When a complaint is filed under 49-2-305, a complainant, respondent, or aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The person making the election shall give notice to the commission and to all other complainants and respondents to whom the complaint relates. Within 30 days after the election is made, the commission shall commence a civil action in an appropriate district court on behalf of the aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene in the action.

(b) The commission may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).

(5) (a) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the

time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the commission except as provided in subsection (5)(d). If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission may not continue administrative proceedings on a complaint after the beginning of a trial of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved person may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

(f) Upon timely application, the commission may intervene in a civil action brought under this subsection (5) if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under subsection (7).

(6) If the court finds that a person, institution, entity, or agency against whom a complaint was filed under this section has engaged in a discriminatory practice in violation of 49-2-305, the court may, in addition to the other remedies and injunctive and other equitable relief provided under 49-2-506, award punitive damages. The court may also award attorney fees to the prevailing party.

(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.

(b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.

(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:

(i) in an amount not exceeding $50,000 for a first violation; and

(ii) in an amount not exceeding $100,000 for any subsequent violation.

(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.

(8) Civil penalties under this section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement.

History: En. Sec. 2, Ch. 801, L. 1991.

Cross-References

Access to housing accommodations, 49-4-212.

Part 6
Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

Cross-References

Obstructing a public servant, 45-7-302.

Place of imprisonment, 46-18-211.

49-2-602. Intimidation or interference in right to be free from housing discrimination — penalties. (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental disability, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because that person is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because the citizen is or has been, or in order to discourage that citizen or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because the citizen is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life.

History: En. Sec. 9, Ch. 801, L. 1991; amd. Sec. 10, Ch. 407, L. 1993.

Cross-References

Access to housing accommodations, 49-4-212.

CHAPTER 3

GOVERNMENTAL CODE OF FAIR PRACTICES

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49-3-309. Procedure upon a finding of discrimination by commission.
49-3-310. Procedure upon failure by commission to find discrimination.
49-3-311. Enforcement of commission order.
49-3-312. Filing a complaint in district court.

Chapter Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Variation of oath to suit witness' belief, 1-6-103.

Religious beliefs of witness not relevant to credibility, Rule 610, M.R.Ev. (see Title 26, ch. 10).

Marital status irrelevant to parent-child relationship, 40-6-103.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Part 1

General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) (a) "Physical or mental disability" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(5) "Qualifications" means qualifications that are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979; amd. Sec. 1, Ch. 540, L. 1983; amd. Sec. 2, Ch. 241, L. 1991; amd. Sec. 11, Ch. 407, L. 1993.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References

Applicability to community college districts, 20-15-403.

49-3-103. Permitted distinctions. (1) Nothing in this chapter prohibits any public employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental disability when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;

(c) from discharging or otherwise disciplining an individual for good cause; or

(d) from providing greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.

(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983; amd. Sec. 16, Ch. 646, L. 1989; amd. Sec. 5, Ch. 506, L. 1991; amd. Sec. 6, Ch. 13, L. 1993; amd. Sec. 12, Ch. 407, L. 1993.

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

49-3-105. Repealed. Sec. 11, Ch. 801, L. 1991.

History: En. Sec. 4, Ch. 540, L. 1983.

49-3-106. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;
(2) conducting investigations of complaints;
(3) petitioning for a declaratory ruling; and
(4) conduct of hearings.

History: En. Sec. 2, Ch. 540, L. 1983; amd. Sec. 7, Ch. 801, L. 1991.

Part 2

Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985; amd. Sec. 13, Ch. 407, L. 1993.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

Classified service employees — municipal commission-manager government, 7-3-4415.

Employment by county Board of Park Commissioners, 7-16-2326.

Employment of veterans, Title 10, ch. 2, part 2.

Work-study program, 20-25-707.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

49-3-202. Employment referrals and placement services. (1) All state and local governmental agencies, including educational institutions, that provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin must be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing the programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320; amd. Sec. 14, Ch. 407, L. 1993.

Cross-References

State employment service, 39-1-102, 39-51-307.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. The programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of persons who are culturally deprived or who are educationally or economically disadvantaged. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979; amd. Sec. 15, Ch. 407, L. 1993.

Cross-References

No aid to sectarian schools, Art. X, sec. 6, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Special education supervisor, 20-3-103.

Exemption from immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.

Charges for tuition — waivers, 20-25-421.

Exemption from barber apprenticeship fees, 37-30-307.

Exemption from cosmetology examination and fees, 37-31-308.

49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. Each state or local governmental agency shall take appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of public health and human services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979; amd. Sec. 3, Ch. 543, L. 1989; amd. Sec. 4, Ch. 682, L. 1991; amd. Sec. 16, Ch. 407, L. 1993; amd. Sec. 235, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), in third sentence, substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Cross-References

Restrictions on licensing of former criminal offenders, 23-4-201, 23-5-176, 32-2-409, 37-1-201 through 37-1-205, 37-47-302, 37-47-341.

Professions and Occupations, Title 37.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Exemptions from licensure as physician — Christian Science practitioners and mohels, 37-3-103.

Adoption policy — best interest of child standard — factors to be considered, 40-8-114.

Licensing and standards for spiritual healing institutions, 50-5-104.

Special license plates for disabled veterans, handicapped persons, and ex-prisoners of war, 61-3-446, 61-3-452, 61-3-453.

Ineligibility of handicapped for driver's license, 61-5-105.

Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) A state or local facility may not be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan that has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979; amd. Sec. 5, Ch. 682, L. 1991; amd. Sec. 17, Ch. 407, L. 1993.

Cross-References

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Use of hospital district facilities, 7-34-2123.

Accessibility of polling places, Title 13, ch. 3, part 2.

Library services for the handicapped, 22-1-103.

Adoption policy — best interest of child standard — factors to be considered, 40-8-114.

Health care facilities, 50-5-105.

Exemption from prenatal blood tests on religious grounds, 50-19-109.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Community-based services for developmentally disabled, 53-20-212.

Opportunity for religious observance in mental health facilities, 53-21-142.

Community mental health centers, 53-21-206.

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324; amd. Sec. 18, Ch. 407, L. 1993.

Cross-References

Furnishing of medical assistance, 53-6-105.

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services must contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979; amd. Sec. 19, Ch. 407, L. 1993.

Cross-References

Urban renewal, 7-15-4207.
Public Contracts, Title 18.

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: En. Sec. 3, Ch. 540, L. 1983.

Part 3

Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.

49-3-302. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. 64-326 by Sec. 11, Ch. 487, L. 1975; R.C.M. 1947, 64-326; amd. Sec. 21, Ch. 177, L. 1979.

49-3-303. Repealed. Sec. 14, Ch. 540, L. 1983.

History: En. 64-329 by Sec. 14, Ch. 487, L. 1975; R.C.M. 1947, 64-329; amd. Sec. 1, Ch. 168, L. 1981.

49-3-304. Filing complaints. (1) Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(3) A complaint not filed within the times set forth in this section may not be considered by the commission.

History: En. Sec. 5, Ch. 540, L. 1983; amd. Sec. 2, Ch. 415, L. 1987.

49-3-305. Form of complaint. A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

History: En. Sec. 6, Ch. 540, L. 1983.

49-3-306. Temporary relief by court order. At any time after a complaint is filed with the commission under this chapter, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.

History: En. Sec. 7, Ch. 540, L. 1983; amd. Sec. 8, Ch. 801, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

Temporary restraining orders, 27-19-314 through 27-19-319.

49-3-307. Informal settlement. The commission staff shall promptly and impartially investigate the matters set out in a complaint filed with the commission. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by informal conference, conciliation, and persuasion.

History: En. Sec. 8, Ch. 540, L. 1983.

49-3-308. Contested case hearing before commission. (1) If the informal efforts to eliminate the discrimination alleged in a complaint filed with the commission are unsuccessful, the staff shall inform the commission of the failure and the commission shall serve written notice, together with a copy of the complaint, requiring the state or local governmental agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The commission hearing must be held in the county where the unlawful conduct is alleged to have occurred unless the state or local governmental agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the commission staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act, except as provided in 49-3-311.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorney fees. The court in its discretion may award the prevailing party reasonable attorney fees. Such action must comply with the Montana Rules of Civil Procedure.

History: En. Sec. 9, Ch. 540, L. 1983.

Cross-References

Contested case procedure under Montana Administrative Procedure Act, Title 2, ch. 4, parts 6 and 7.

49-3-309. Procedure upon a finding of discrimination by commission. (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

History: En. Sec. 10, Ch. 540, L. 1983.

49-3-310. Procedure upon failure by commission to find discrimination. If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

History: En. Sec. 11, Ch. 540, L. 1983.

49-3-311. Enforcement of commission order. If the commission's order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order.

History: En. Sec. 12, Ch. 540, L. 1983; amd. Sec. 2, Ch. 539, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

Temporary restraining orders, 27-19-314 through 27-19-319.

49-3-312. Filing a complaint in district court. (1) Except as provided in subsection (2), the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-3-308; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-3-308, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-3-304 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the complaint shall be barred.

(6) If the district court finds, in an action under this section, that a state or local governmental agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-3-309 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter.

History: En. Sec. 13, Ch. 540, L. 1983; amd. Sec. 2, Ch. 511, L. 1987.

Cross-References

Injunctions, Title 27, ch. 19.

CHAPTER 4

RIGHTS OF THE HANDICAPPED

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49-4-307. Penalty.
49-4-308 and 49-4-309 reserved.
49-4-310. Special parking permit for long-term care facility.
49-4-311. Use of motorized wheelchairs on public streets.
49-4-312. Regulation by municipalities.

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Part 5 — Interpreters for the Deaf in Official Proceedings

49-4-501. Policy.
49-4-502. Definitions.
49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used.
49-4-504. Preliminary determination.
49-4-505. Intermediary interpreter to be used.
49-4-506. Interpreter in full view.
49-4-507. Coordination of interpreter requests.
49-4-508. Oath of interpreter.
49-4-509. Compensation.
49-4-510. Waiver.
49-4-511. Privileged communications.

Chapter Cross-References

Income tax exemption for handicapped child, 15-30-114.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Special education for exceptional children, Title 20, ch. 7, part 4.

Surrogate parent to represent interests of handicapped student, 20-7-461 through 20-7-463.

State School for the Deaf and Blind, Title 20, ch. 8.

Library services for the handicapped, 22-1-103.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Regulation of speech-language pathologists and audiologists, Title 37, ch. 15.

Exemption from barber apprenticeship fees, 37-30-307.

Exemption from cosmetology examination and fees, 37-31-308.

Exclusion from minimum wage and overtime compensation laws, 39-3-406.

Workers' compensation — vocationally handicapped, Title 39, ch. 71, part 9.

Workers' compensation — vocational rehabilitation, Title 39, ch. 71, part 10.

Mental competency of criminal defendants, Title 46, ch. 14.

Duty of state to develop services for handicapped children, 50-1-202.

Accessibility of buildings built with public funds, 50-60-201.

Child rehabilitation, 52-2-113.

Adoption of hard-to-place children, Title 52, ch. 2, part 5.

Adult services, Title 52, ch. 3.

Vocational rehabilitation, Title 53, ch. 7.

Community programs and homes for the physically disabled, Title 53, ch. 19, part 1.

Developmentally disabled, Title 53, ch. 20.

Mentally ill, Title 53, ch. 21.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Ineligibility for driver's license, 61-5-105.

Advertising by public utilities of special equipment to aid handicapped, 69-3-307.

Exemption from death taxes — property transferred to certain children's hospitals, 72-16-312.

Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

Part 1
Discrimination in Employment

49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the person's physical disability. There is no discrimination when the nature or extent of the disability reasonably precludes the performance of the particular employment or when the particular employment may subject the person with a disability or that person's fellow employees to physical harm.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part); amd. Sec. 20, Ch. 407, L. 1993.

49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

Cross-References

Misdemeanor penalty, 46-18-212.

Part 2
Rights of the Physically Disabled

49-4-201. Repealed. Sec. 11, Ch. 239, L. 1983.

History: En. Sec. 1, Ch. 181, L. 1971; R.C.M. 1947, 71-1303.

49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually impaired, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually impaired, the deaf, and the otherwise physically disabled must be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

History: En. Sec. 2, Ch. 181, L. 1971; R.C.M. 1947, 71-1304; amd. Sec. 1, Ch. 176, L. 1981; amd. Sec. 21, Ch. 407, L. 1993.

Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

49-4-203. Definition. "Housing accommodation" means any real property or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings but does not include any single-family residence the occupants of which furnish for compensation not more than one room therein.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(2).

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations. (1) The blind, the visually impaired, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually impaired, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(2), (3); amd. Sec. 22, Ch. 177, L. 1979; amd. Sec. 2, Ch. 176, L. 1981; amd. Sec. 22, Ch. 407, L. 1993.

Cross-References

Pedestrian traffic laws, Title 61, ch. 8, part 5.

49-4-212. Access to housing accommodations. Blind, visually impaired, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(1), (3); amd. Sec. 3, Ch. 176, L. 1981; amd. Sec. 10, Ch. 801, L. 1991; amd. Sec. 23, Ch. 407, L. 1993.

Cross-References

Procedures and remedies for enforcement of housing discrimination laws, 49-2-510.

Intimidation or interference in right to be free from housing discrimination — penalties, 49-2-602.

49-4-213. Use of white or metallic-colored canes restricted to the blind. No person, except those wholly or partially blind, shall carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color or white or metallic tipped with red.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(1).

49-4-214. Right to be accompanied by a guide or hearing dog. (1) Every totally or partially blind or deaf person has the right to be accompanied by a guide or hearing dog, especially trained for the purpose, in any of the places mentioned in 49-4-211(2) without being charged extra for the guide or hearing dog. He is liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind or deaf person who has a guide or hearing dog or who obtains a guide or hearing dog is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. He may not be required to pay extra compensation for the guide or hearing dog but is liable for any damage done to the premises by the guide or hearing dog.

History: En. Sec. 4, Ch. 181, L. 1971; amd. Sec. 2, Ch. 266, L. 1975; R.C.M. 1947, 71-1306; amd. Sec. 23, Ch. 177, L. 1979; amd. Sec. 4, Ch. 176, L. 1981.

49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, deaf, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 266, L. 1975; R.C.M. 1947, 71-1309; amd. Sec. 5, Ch. 176, L. 1981.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty, 46-18-212.

49-4-216. Duty and civil liability of pedestrian or driver approaching blind person. (1) A pedestrian who is not totally or partially blind or a driver of a vehicle who approaches or comes in contact with a person who is totally or partially blind and is carrying a cane or walking stick predominately white or metallic in color or white tipped with red or is being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of such blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to such blind person.

(2) A driver or pedestrian who fails to take such precautions is liable in damages for any injury caused the totally or partially blind person. A totally or partially blind pedestrian who is not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 has all of the rights and privileges conferred by law upon other persons, and the failure of such a pedestrian to carry such a cane or to use a guide dog in any such place may not be held to constitute or be evidence of contributory negligence.

History: En. Sec. 5, Ch. 181, L. 1971; amd. Sec. 3, Ch. 266, L. 1975; R.C.M. 1947, 71-1307; amd. Sec. 24, Ch. 177, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

Pedestrian traffic laws, Title 61, ch. 8, part 5.

49-4-217. Penalty for violation of duty or unauthorized use of cane. Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this part, contrary to the provisions of this part, or who shall fail to heed the approach of a person carrying such a cane as is described by this part or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick or being led by a trained guide dog or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor punishable by a fine not to exceed $25.

History: En. Sec. 6, Ch. 181, L. 1971; R.C.M. 1947, 71-1308.

Part 3

Special Parking Permits Motorized Wheelchairs

49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and who, as determined by a licensed physician, meets one of the following criteria:

(a) cannot walk 200 feet without stopping to rest;

(b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;

(c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) uses portable oxygen;

(e) is restricted by lung disease to such an extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or

(g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician as being comparable in severity to the other conditions listed in this subsection (1).

(2) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under 61-3-332(10)(g). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, not to exceed 24 months, upon receipt of a new certification from the disabled person's physician that the

conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(1), (6); amd. Sec. 1, Ch. 614, L. 1983; amd. Sec. 24, Ch. 407, L. 1993; amd. Sec. 1, Ch. 202, L. 1995; amd. Sec. 1, Ch. 392, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 202 inserted (3) authorizing issuance of special parking permits to agency or business providing transportation as service to disabled persons; and inserted exception clause at beginning of (4).

Chapter 392 substituted (1)(a) through (1)(g) concerning disability criteria necessary for obtaining a special parking permit for former (1)(a), (1)(b), and (1)(c) that read: "(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical disability that impairs mobility when not in a motor vehicle;

(b) regardless of whether the person holds a driver's license or owns a motor vehicle, has a permanent physical disability that impairs driving ability and impairs mobility when not in a motor vehicle to such an extent that the person needs to be driven by another person to a destination; or

(c) has a temporary physical disability that impairs driving ability or mobility when not in a motor vehicle to such an extent that the person needs to be driven by another person to a destination"; inserted (2) concerning the issuance of a temporary placard for a condition expected to improve within 6 months; and made minor changes in style.

49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate issued under 61-3-332(10)(c)(i)(A) or (10)(g) or 61-3-426(2) and the reserved parking space is being used by the person for whom the permit, plate, or placard was issued, to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c)(i)(A) or (10)(g) or 61-3-426(2) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(2); amd. Sec. 2, Ch. 614, L. 1983; amd. Sec. 2, Ch. 71, L. 1985; amd. Sec. 1, Ch. 203, L. 1985; amd. Sec. 1, Ch. 616, L. 1985; amd. Sec. 1, Ch. 187, L. 1987; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 1, Ch. 209, L. 1993; amd. Sec. 3, Ch. 406, L. 1993; amd. Sec. 25, Ch. 407, L. 1993; amd. Sec. 2, Ch. 392, L. 1995; amd. Sec. 2, Ch. 489, L. 1995.

Compiler's Comments

1995 Amendments: Chapter 392 in (1), at end, inserted "when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle"; in (2), near beginning after "vehicle", deleted "other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10)(c)(i)(A) and conveying a 100% disabled veteran" and near middle, after "disability", inserted remainder of subsection concerning the display of a parking permit, plate, or placard and the use of the reserved parking space; and in (3), after "61-3-332(10)(c)(i)(A)", inserted "or (10)(g)".

Chapter 489 in (2), at beginning after "vehicle", deleted "other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10(c)(i)(A) and conveying a 100% disabled veteran" and near middle, after "disability", inserted remainder of subsection allowing parking of a vehicle with a lawful Montana disability plate, a similar valid plate from a foreign jurisdiction, or a specially inscribed plate; in (3), near middle of introductory clause after "61-3-332(10)(c)(i)(A)", inserted "or 61-3-426(2)"; and made minor changes in style. Amendment effective January 1, 1996.

Cross-References

Stopping, standing, and parking laws, 61-8-353 through 61-8-357.

49-4-303. Applications for permit. (1) Applications for a special parking permit may be made to the department of justice on forms provided by the department, which must require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications shall be available at the office of the county treasurer in each county and directly from the department.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(4), (5).

49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle. (1) The department of justice shall provide a special license plate under 61-3-332(10)(g) or 61-3-426(1) or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-303, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a person with a disability.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(3); amd. Sec. 3, Ch. 614, L. 1983; amd. Sec. 4, Ch. 159, L. 1985; amd. Sec. 1, Ch. 456, L. 1991; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 26, Ch. 407, L. 1993; amd. Sec. 3, Ch. 489, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 489 in (1), in first sentence after "61-3-332", substituted "(10)(g) or 61-3-426(1)" for "(10)(f)". Amendment effective January 1, 1996.

49-4-305. Expiration of permit. (1) Except as provided in subsection (2), a permit expires on the occurrence of either of the following:

(a) 3 years from the date of issuance, unless the permit was issued to a person who has a condition expected to improve within 6 months. A person may renew a permit if a licensed physician certifies that the person's mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met.

(b) certification by a licensed physician that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a licensed physician that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(7); amd. Sec. 4, Ch. 614, L. 1983; amd. Sec. 4, Ch. 406, L. 1993; amd. Sec. 27, Ch. 407, L. 1993; amd. Sec. 3, Ch. 392, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 392 in (1)(a), at beginning of first sentence, substituted "3 years" for "4 years" and after "issuance" inserted "unless the permit was issued to a person who has a condition expected to improve within 6 months" and at beginning of second sentence substituted "person" for "permittee", before "physician" inserted "licensed", and after "certifies" substituted "that the person's mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met" for "that the permittee's disability impairing mobility still exists"; in (1)(b), before "physician", inserted "licensed" and after "physician" substituted "that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met" for "that the permittee's disability impairing mobility no longer exists"; and in (2)(b), before "physician", inserted "licensed" and after "physician" substituted "that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met" for "that the permittee's disability impairing mobility no longer exists".

49-4-306. Department of justice to publicize permit. (1) The department of justice shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a special parking permit.

(2) The department of justice shall budget sufficient funds to accomplish the requirements of subsection (1).

History: En. Sec. 1, Ch. 32, L. 1981.

49-4-307. Penalty. A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of $100. However, a person charged with violating 49-4-302(2) may not be convicted if within 24 hours the person produces in court or the office of the arresting officer a special parking permit that was previously issued to the person and that is valid at the time of arrest.

History: En. Sec. 6, Ch. 614, L. 1983; amd. Sec. 2, Ch. 187, L. 1987; amd. Sec. 5, Ch. 406, L. 1993.

49-4-308 and 49-4-309 reserved.

49-4-310. Special parking permit for long-term care facility. A long-term care facility, as defined in 37-9-101, may apply for a permit issued for special parking spaces under 49-4-302. If granted, the permit entitles the facility to the privileges granted in 49-4-302.

History: En. Sec. 3, Ch. 187, L. 1987.

49-4-311. Use of motorized wheelchairs on public streets. A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle during daylight hours on the streets of a city or town. When operated on public streets, such vehicles must display the slow moving equipment emblem required in 61-9-415(2) or be equipped with a windwhip displaying a red flag.

History: En. 11-911.1 by Sec. 2, Ch. 369, L. 1974; R.C.M. 1947, 11-911.1.

49-4-312. Regulation by municipalities. Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

History: En. 11-911.2 by Sec. 3, Ch. 369, L. 1974; R.C.M. 1947, 11-911.2.

Part 4

Preference in Leasing of Concessions (Repealed. Sec. 14, Ch. 175, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

49-4-401. En. Sec. 2, Ch. 66, L. 1951; R.C.M. 1947, 71-1302; amd. Sec. 1, Ch. 474, L. 1979.

49-4-402. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-403. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-404. En. Sec. 2, Ch. 474, L. 1979.

49-4-405. En. Sec. 3, Ch. 474, L. 1979.

49-4-406. En. Sec. 4, Ch. 474, L. 1979.

Part 5

Interpreters for the Deaf in Official Proceedings

Part Cross-References

State School for the Deaf and Blind, Title 20, ch. 8.

Regulation of speech-language pathologists and audiologists, Title 37, ch. 15.

Workers' compensation for occupational deafness, Title 39, ch. 71, part 8.

49-4-501. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

History: En. Sec. 1, Ch. 245, L. 1979.

Cross-References

Courts open to all persons for full legal redress, Art. II, sec. 16, Mont. Const.

Rights of accused, Art. II, sec. 24, Mont. Const.

49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Intermediary interpreter" means a knowledgeable deaf person who, because of the person's intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

(4) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(5) "Qualified interpreter" means an interpreter listed by the department of public health and human services as provided in 49-4-507.

History: En. Sec. 2, Ch. 245, L. 1979; amd. Sec. 236, Ch. 546, L. 1995.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of qualified interpreter substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

History: En. Sec. 3, Ch. 245, L. 1979.

Cross-References

Commitment of the developmentally disabled, Title 53, ch. 20, part 1.

Commitment of the seriously mentally ill, Title 53, ch. 21, part 1.

49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

History: En. Sec. 4, Ch. 245, L. 1979.

49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

History: **En. Sec. 5, Ch. 245, L. 1979.**

49-4-506. Interpreter in full view. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

History: **En. Sec. 6, Ch. 245, L. 1979.**

49-4-507. Coordination of interpreter requests. (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of public health and human services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of public health and human services with a list of qualified and available interpreters.

(3) The only function of the department of public health and human services is to maintain the list referred to in subsection (2).

History: **En. Sec. 7, Ch. 245, L. 1979; amd. Sec. 237, Ch. 546, L. 1995.**

Compiler's Comments

1995 Amendment: Chapter 546 in three places substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

49-4-508. Oath of interpreter. Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

History: **En. Sec. 8, Ch. 245, L. 1979.**

49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

History: **En. Sec. 9, Ch. 245, L. 1979.**

49-4-510. Waiver. The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

History: **En. Sec. 10, Ch. 245, L. 1979.**

49-4-511. Privileged communications. Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

History: En. Sec. 11, Ch. 245, L. 1979.

Cross-References

Attorney-client privilege, 26-1-803.

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